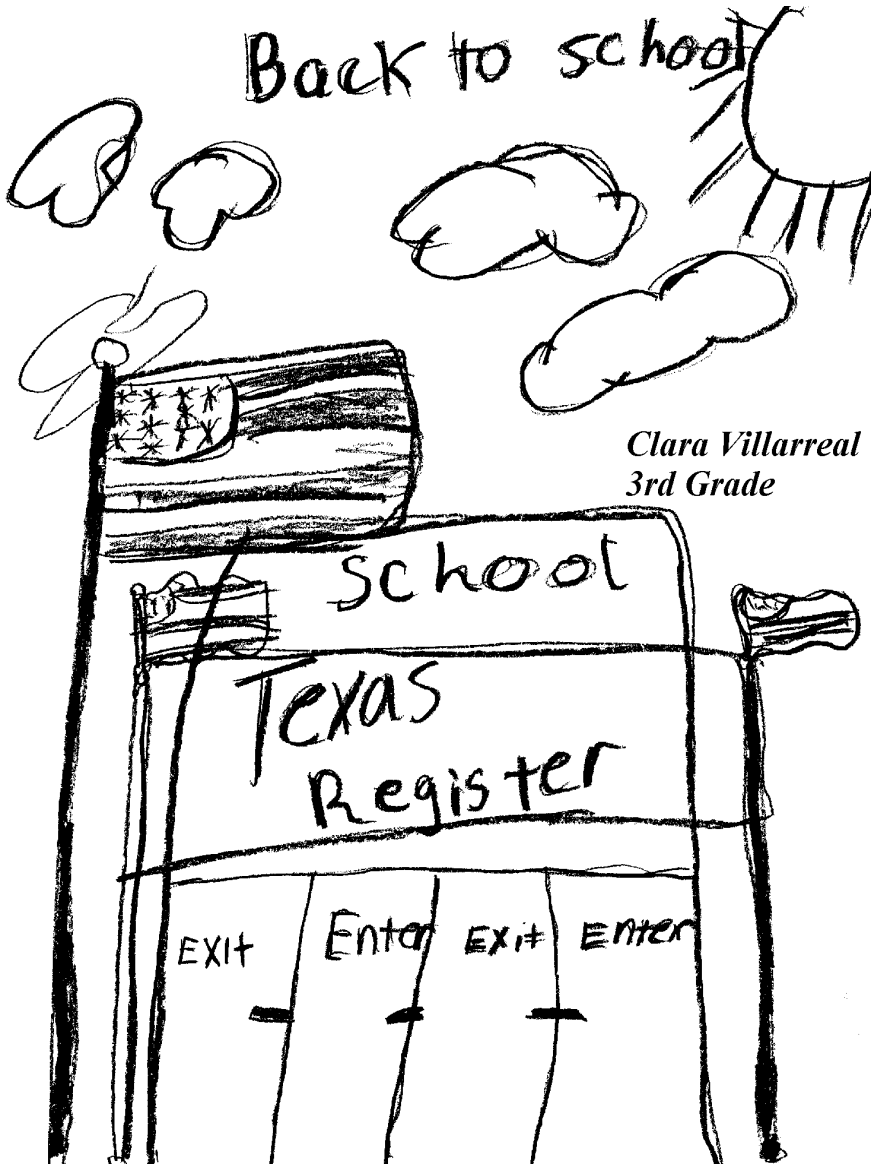
# TEXAS REGISTER

*Volume 29 Number 37* *September 10, 2004* *Pages 8689-8968*




*Clara Villarreal*
*3rd Grade*

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

***Texas Register,* (ISSN 0362-4781),** is published weekly, 52 times a year. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: printed, one year $200. First Class mail subscriptions are available at a cost of $300 per year. Single copies of most issues for the current year are available at $10 per copy in printed format.



The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Austin, Texas and additional mailing offices.

**POSTMASTER:** Send address changes to the ***Texas Register,*** P.O. Box 13824, Austin, TX 78711-3824.


a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 226-7199
(512) 463-5561
FAX (512) 463-5569
http://www.sos.state.tx.us
subadmin@sos.state.tx.us

# IN THIS ISSUE

## *WITHDRAWN RULES*



## *ADOPTED RULES*

# Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.
http://www.sos.state.tx.us/texreg

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is http://www.oag.state.tx.us. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site. http://www.state.tx.us/Government

•••

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

# THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

## Request for Opinions

**RQ-0259-GA**

**Requestor:**

The Honorable Bruce Isaacks

Denton County Criminal District Attorney

1450 East McKinney, Suite 3100

Post Office Box 2344

Denton, Texas 76209-4524

Re: Whether a bail bond surety who is convicted of violating section 1704.304(c) of the Occupations Code has committed a crime of moral turpitude for purposes of section 1704.302(c) (Request No. 0259-GA)

**Briefs requested by September 25, 2004**

**RQ-0260-GA**

**Requestor:**

The Honorable Robert E. Talton

Chair, Urban Affairs Committee

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a municipality may sell towing rights on state highways without approval of the Texas Department of Transportation (Request No. 0260-GA)

**Briefs requested by September 25, 2004**

**RQ-0261-GA**

**Requestor:**

The Honorable Will Hartnett

Chair, Judicial Affairs Committee

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a municipality may grant a tax abatement for newly added business personal property that was previously subject to a ten-year tax abatement agreement (Request No. 0261-GA)

**Briefs requested by September 25, 2004**

**RQ-0262-GA**

**Requestor:**

The Honorable Will Hartnett

Chair, Judicial Affairs Committee

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a municipality may reimburse a private developer from its tax increment fund for costs incurred by the developer for environmental remediation and related costs in the reinvestment zone if such costs have not been competitively bid (Request No. 0262-GA)

**Briefs requested by September 26, 2004**

**RQ-0263-GA**

**Requestor:**

The Honorable Richard J. Miller

Bell County Attorney

Post Office Box 1127

Belton, Texas 76513

Re: Whether a commissioners court may adopt an order authorizing cremation as a means of disposing of the remains of a deceased pauper (Request No. 0263-GA)

**Briefs requested by September 26, 2004**

*For further information, please access the website at www.oag.state.tx.us. or call the Opinion Committee at 512/463-2110.*

TRD-200405521
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: September 1, 2004

♦ ♦ ♦

Opinions

**Opinion No. GA-0237**

The Honorable Eugene D. Taylor

Williamson County Attorney

Williamson County Courthouse Annex

Second Floor

405 Martin Luther King, Box 7

Georgetown, Texas 78626

Re: Whether liens for public improvement district assessments levied against property that was not a homestead at the time of assessment may be enforced by foreclosure even though the property has become a homestead between the date of assessment and the date of the enforcement action (RQ-0187-GA)

**S U M M A R Y**

A public improvement district assessment may be enforced by foreclosure of a homestead provided that the statutory lien created by section 372.018(b) of the Local Government Code predates the date the property became a homestead and the amounts to be collected fall within the lien's scope.

**Opinion No. GA-0238**

The Honorable Susan D. Reed

Bexar County Criminal District Attorney

Bexar County Justice Center

300 Dolorosa, Fifth Floor

San Antonio, Texas 78205-3030

Re: Whether deputy sheriffs are "police officers" for purposes of Local Government Code chapter 174, The Fire and Police Employee Relations Act (RQ-0189-GA)

**S U M M A R Y**

Chapter 174 of the Local Government Code, The Fire and Police Employee Relations Act, applies to counties and deputy sheriffs. Deputy sheriffs are "police officers" under the Act.

**Opinion No. GA-0239**

Ms. Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

7701 North Lamar, Suite 400

Austin, Texas 78752

Re: Whether the Board of Professional Land Surveying may establish a "retired status" category for its registrants, set a reduced renewal fee, and waive continuing education requirements for those individuals (RQ-0191-GA)

**S U M M A R Y**

The Board of Professional Land Surveying may not establish a "retired status" for its registrants, set a reduced renewal fee, and waive continuing education requirements for those individuals.

**Opinion No. GA-0240**

The Honorable Rodney Ellis

Chair, Committee on Government Organization

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Authority of the Board of Pardons and Paroles to consider applications for pardons based on innocence (RQ-0192-GA)

**S U M M A R Y**

The Board of Pardons and Paroles has by rule established requirements for considering applications for its recommendation to the governor for a pardon based on innocence. Pursuant to another rule, the Board has discretion to waive such requirements. It is a matter within the Board's reasonable discretion to determine when it should waive a requirement or requirements.

**Opinion No. GA-0241**

The Honorable Tempie T. Francis

Motley County Attorney

Post Office Box 7

Matador, Texas 79244

Re: Whether an attorney appointed county attorney pro tem is disqualified from acting as criminal defense counsel in an adjoining county under Code of Criminal Procedure article 2.08 (RQ-0190-GA)

**S U M M A R Y**

Article 2.08 of the Code of Criminal Procedure does not disqualify an attorney appointed by a court as county attorney pro tem from representing criminal defendants in an adjoining county.

**Opinion No. GA-0242**

The Honorable Cheryll Mabray

Llano County Attorney

Llano County Courthouse

801 Ford, Room 111

Llano, Texas 78643

Re: Whether a commissioners court may hold an election that creates an emergency service district and imposes a sales and use tax within the proposed district's boundaries RQ-0202-GA)

**S U M M A R Y**

Health and Safety Code chapter 776 does not authorize a commissioners court to call an election to create an emergency service district and at the same time call for an election for a sales and use tax in the emergency service district boundaries. The election order must provide for an election to confirm the district's creation and authorize the levy of a property tax, setting the maximum tax rate at any rate that does not exceed the ten cents on the $100 valuation allowed by Texas Constitution article III, section 48-e. Only the district board may call an election to adopt a sales and use tax.

Tax Code chapter 324 provides for a county-wide sales and use tax to fund county health services. A county may not adopt the chapter 324 tax if the tax rate authorized by that chapter combined with the rate of all sales and use taxes imposed in any city within the county exceeds two percent in that city.

*For information regarding this publication, please access the website at www.oag.state.tx.us or call the Opinion Committee at 512-463-2110.*

TRD-200405537

Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: September 1, 2004

♦ ♦ ♦

# EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

## TITLE 16. ECONOMIC REGULATION

## PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

### CHAPTER 73. ELECTRICIANS

**16 TAC §73.10**

The Texas Department of Licensing and Regulation ("Department") adopts on an emergency basis an amendment to §73.10 concerning work involved in the manufacture of electrical equipment as it relates to the electricians program. The rule is adopted pursuant to Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment if the adopting agency finds that an imminent peril to the public health, safety, or welfare requires adoption of the rules on less than 30 days' notice.

The Texas Commission of Licensing and Regulation ("Commission"), at a regularly called meeting on August 25, 2004, found that emergency adoption of the rule is necessary to prevent severe economic repercussions in the electronic equipment manufacturing sector and the many private industries and public institutions they serve which would ultimately jeopardize the safety of public welfare. The Commission authorized the Department to adopt on an emergency basis the amendment to §73.10 to include a new definition, paragraph (19), of work involved in the manufacture of electrical equipment.

The amendment will be proposed and published in the Proposed Rules section of the *Texas Register* in accordance with Texas Government Code, §§2001.023. The proposed rule will be open for public comment prior to final adoption by the Department in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The amendment to §73.10 is adopted on an emergency basis under Texas Occupations Code, Chapter 1305 which establishes a program to regulate electricians; Texas Occupations Code, Chapter 51, §51.203 which provides the Department the authority to promulgate rules to implement each law establishing a program regulated by it; and Texas Government Code, Chapter 2001, §2001.034, which provides for the adoption of administrative rules on an emergency basis without notice and comment.

The statutory provisions affected by the emergency adoption are those set forth in Texas Occupations Code, Chapter 1305 and Chapter 51. No other statutes, articles, or codes are affected by the emergency adoption.

*§73.10. Definitions.*

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1)-(18) (No change.)

(19) Work Involved in the Manufacture of Electrical Equipment--Work involved in the manufacture of electrical equipment includes on and off-site manufacture, commissioning, testing, calibration, coordination, troubleshooting, evaluation, repair or retrofits with components of the same ampacity, maintenance and servicing of electrical equipment within their enclosures performed by authorized employees of electrical equipment manufacturers or their authorized representatives and limited to the type of products they manufacture.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 25, 2004.

TRD-200405385
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective Date: August 25, 2004
Expiration Date: December 22, 2004
For further information, please call: (512) 463-7348

♦ ♦ ♦

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 1. ADMINISTRATION

## PART 10. DEPARTMENT OF INFORMATION RESOURCES

## CHAPTER 201. PLANNING AND MANAGEMENT OF INFORMATION RESOURCES TECHNOLOGIES

### 1 TAC §201.3

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Information Resources or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Department of Information Resources (department) proposes the repeal of 1 TAC §201.3, relating to information resources managers. By separate action, the department will publish proposed new rules that identify the information resources manager standards applicable to state agencies other than institutions of higher education and the standards applicable to institutions of higher education.

Dustin Lanier, Strategic Initiatives Division Director for the department, has determined that there will be no fiscal implications for state or local government if 1 TAC §201.3 is repealed. The public will benefit from the clarification resulting from repealing this rule and proposing new information resources manager rules that distinguish between the standards applicable to state agencies other than institutions of higher education and the standards applicable to institutions of higher education.

Mr. Lanier believes there will be no different effect on small businesses than there is on large businesses since the rule does not affect businesses. He also believes there is no additional anticipated economic cost to persons if the rule is repealed.

Comments on the proposed repeal of 1 TAC §201.3 may be submitted to Renée Mauzy, General Counsel, Department of Information Resources, P.O. Box 13564, Austin, Texas 78711, or electronically to renee.mauzy@dir.state.tx.us no later than 5:00 p.m. CT, within 30 days of publication.

The repeal is proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

Texas Government Code, Chapter 2054 and §2001.039(c) are affected by the proposed repeal.

*§201.3. Information Resources Managers.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 26, 2004.

TRD-200405399
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

### 1 TAC §201.7

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Information Resources or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Department of Information Resources (department) proposes the repeal of 1 TAC §201.7, relating to interagency contracts for information resources technologies. By separate action, the department will publish proposed new rules that identify the interagency contracts for information resources technologies standards applicable to state agencies other than institutions of higher education and the standards applicable to institutions of higher education.

Dustin Lanier, Strategic Initiatives Division Director for the department, has determined that there will be no fiscal implications for state or local government if 1 TAC §201.7 is repealed. The public will benefit from the clarification resulting from repealing this rule and proposing new interagency contracting standards applicable to information resources technologies that distinguish between the standards applicable to state agencies other than institutions of higher education and the standards applicable to institutions of higher education.

Mr. Lanier believes there will be no different effect on small businesses than there is on large businesses since the rule does not affect businesses. He also believes there is no additional anticipated economic cost to persons if the rule is repealed.

Comments on the proposed repeal of 1 TAC §201.7 may be submitted to Renée Mauzy, General Counsel, Department of Information Resources, P.O. Box 13564, Austin, Texas 78711, or electronically to renee.mauzy@dir.state.tx.us no later than 5:00 p.m. CT, within 30 days of publication.

The repeal is proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act and §2054.121, Texas Government

Code, which requires the department to readopt rules for them to apply to institutions of higher education.

Texas Government Code, Chapter 2054 and §2001.039(c) are affected by the proposed repeal.

*§201.7. Interagency Contracts for Information Resources Technologies.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 26, 2004.

TRD-200405400
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

**1 TAC §201.14**

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Information Resources or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Department of Information Resources (department) proposes the repeal of 1 TAC §201.14, relating to digital signatures. By separate action, the department will publish proposed new rules that identify the digital signature standards applicable to state agencies other than institutions of higher education and the digital signature standards applicable to institutions of higher education.

Dustin Lanier, Strategic Initiatives Division Director for the department, has determined that there will be no fiscal implications for state or local government if 1 TAC §201.14 is repealed. The public will benefit from the clarification resulting from repealing this rule and proposing new digital signature standards that distinguish between the standards applicable to state agencies other than institutions of higher education and the standards applicable to institutions of higher education.

Mr. Lanier believes there will be no different effect on small businesses than there is on large businesses since the rule does not affect businesses. He also believes there is no additional anticipated economic cost to persons if the rule is repealed.

Comments on the proposed repeal of 1 TAC §201.14 may be submitted to Renée Mauzy, General Counsel, Department of Information Resources, P.O. Box 13564, Austin, Texas 78711, or electronically to renee.mauzy@dir.state.tx.us no later than 5:00 p.m. CT, within 30 days of publication.

The repeal is proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act; §2054.121, Texas Government Code, which requires the department to readopt rules for them to apply to institutions of higher education; and §2054.060(a), Texas Government Code, which requires the department to promulgate rules relating to the use of digital signatures by state agencies.

Texas Government Code, Chapter 2054 and §2001.039(c) are affected by the proposed repeal.

*§201.14. Digital Signatures.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 26, 2004.

TRD-200405398
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

**1 TAC §201.17**

The Department of Information Resources (department) proposes to publish for public comment an amendment to 1 TAC §201.17, relating to advisory committees. The department proposes to amend the rule to delete the e-procurement advisory committee and to create the corporate chief information officer advisory group. The term of the e-procurement advisory committee expires August 31, 2004, and the committee is no longer needed. The department proposes the creation of an advisory committee of no more than twenty-four members to provide advice and information to the department on the best practices and lessons learned from corporate information technology initiatives and strategies. Section 201.17(c)(2) establishes the duration of the advisory group. Subsection (c)(3) provides that its members are appointed by and serve at the pleasure of the State of Texas Chief Technology Officer for a four year term. Subsection (c)(4) discusses chairing of the advisory group while subsection (c)(6) - (8) provide for professional facilitation of meetings, authorize the presence of department staff at the meetings and provide that expenses will not be reimbursed.

Dustin Lanier, Director of Strategic Initiatives for the department, has determined that there will be no fiscal implications for state or local government if the amendments proposed to §201.17 are adopted. The public will benefit by the adoption.

Mr. Lanier believes there will be no different effect on small businesses than there is on large businesses. The only anticipated economic cost to persons if the amendment is adopted may be to a person who accepts appointment to the advisory committee. The individual may incur travel costs in attending committee meetings that will not be reimbursed. The costs will vary depending on the distance traveled and the mode of transportation used to travel to the meeting.

Comments on the adoption of the proposed amendment to 1 TAC §201.17 may be submitted to Renée Mauzy, General Counsel, Department of Information Resources, via mail to P.O. Box 13564, Austin, Texas 78711, or electronically to renee.mauzy@dir.state.tx.us no later than 5:00 p.m. CT, within 30 days after publication.

The amendment is proposed under §§2110.005, 2054.033 and 2054.052(a), Texas Government Code.

The amendment is proposed to implement §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act, §2054.033, Texas Government Code, which authorizes the department to appoint advisory

committees and §2110.005, Texas Government Code, which requires an agency that is advised by an advisory committee to adopt rules pertaining to the committee.

*§201.17. Advisory Committees.*

(a) - (b) (No change.)

(c) Corporate Chief Information Officer Advisory Group.

(1) This advisory committee shall consist of no more than twenty-four members including the State of Texas Chief Technology Officer, an employee of a state agency and the chief information officers of corporations that do not sell computing or telecommunications services or products to the state.

(2) Unless the existence of the advisory committee is terminated earlier or extended by board action, the advisory committee shall exist through August 25, 2008.

(3) Each member of the Corporate Chief Information Officer Advisory Group shall be appointed by and serve at the pleasure of the State of Texas Chief Technology Officer for a four year term from the date of appointment. If a member resigns, dies, becomes incapacitated, is removed by the State of Texas Chief Technology Officer as a member or otherwise vacates his or her position, the Chief Technology Officer may appoint a replacement.

(4) The State of Texas Chief Technology Officer shall chair the Corporate Chief Information Officer Advisory Group unless the advisory committee elects a different chair from among its members.

(5) The Corporate Chief Information Officer Advisory Group shall meet at the call of the State of Texas Chief Technology Officer to provide advice and information to the department on the best practices and lessons learned from their corporate information technology initiatives and strategies.

(6) The department may provide professional facilitation for any meetings of the advisory committee.

(7) The department may have staff present at meetings of the advisory committee.

(8) The department may not reimburse the expenses of Corporate Chief Information Officer Advisory Group members in attending meetings.

~~[(c) e-Procurement Advisory Committee.]~~

~~[(1) This advisory committee consists of no more than twenty-four members.]~~

~~[(2) This advisory committee was appointed April 30, 2002 for a term to expire August 31, 2004.]~~

~~[(3) This advisory committee shall:]~~

~~[(A) advise the department on implementation of e-Procurement]~~

~~[(B) provide recommendations and guidance on the e-Procurement project;]~~

~~[(C) participate in issue resolution;]~~

~~[(D) champion the e-Procurement project, excluding any effort to influence legislation;]~~

~~[(E) review documents requiring advisory committee approval within three business days of receipt of the documents;]~~

~~[(F) identify statutory, rule and procedural changes required to successfully implement the e-Procurement project;]~~

~~[(G) ensure stakeholder groups are identified and included in the requirements validation and specification reviews associated with the e-Procurement project;]~~

~~[(H) participate in the evaluation of proposals for an e-Procurement solution; and]~~

~~[(I) assist with contract negotiation with selected e-Procurement vendors if requested to do so by the program management office e-Procurement project manager.]~~

~~[(4) This advisory committee shall meet at least annually at the call of the program management office e-Procurement project manager.]~~

~~[(5) The program management office e-Procurement project manager shall set the agenda for meetings of the advisory committee.]~~

~~[(6) The department may provide professional facilitation for any meetings of the e-Procurement Advisory Committee.]~~

~~[(7) The department may have staff present at e-Procurement Advisory Committee meetings.]~~

~~[(8) The department may reimburse expenses incurred by advisory committee members who are not employed by state agencies or local government.]~~

~~[(9) This advisory committee shall report to the department by June 1st each year. Unless otherwise directed by the program management office e-Procurement project manager, the report shall summarize the work done by the Advisory Committee during the preceding twelve month period and shall make recommendations as to the work proposed to be done for the program management office during the next twelve month period.]~~

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405457
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

## CHAPTER 202. INFORMATION SECURITY STANDARDS

### 1 TAC §§202.1 - 202.8

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Information Resources or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Department of Information Resources (department) proposes the repeal of 1 TAC Chapter 202, §§202.1 - 202.8, concerning Information Security Standards. By separate action, the department will publish proposed new Information Security Standards that identify the security standards applicable to state agencies other than institutions of higher education and the standards applicable to institutions of higher education.

Edward Block, Acting Security Division Director for the department, has determined that there will be no fiscal implications for state or local government if 1 TAC Chapter 202 is repealed. The public will benefit from the clarification resulting from repealing these rules and proposing new information security standards that distinguish between the standards applicable to state agencies other than institutions of higher education and the standards applicable to institutions of higher education.

Mr. Block believes there will be no different effect on small businesses than there is on large businesses since the rules do not affect businesses. He also believes there is no additional anticipated economic cost to persons if the rules are repealed.

Comments on the proposed repeal of 1 TAC Chapter 202 may be submitted to Renée Mauzy, General Counsel, Department of Information Resources, P.O. Box 13564, Austin, Texas 78711, or electronically to renee.mauzy@dir.state.tx.us no later than 5:00 p.m. CST, within 30 days of publication.

The repeal is proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

Texas Government Code, Chapter 2054 and §2001.039(c) are affected by the proposed repeal.

*§202.1. Security Standards Definitions.*

*§202.2. Security Standards Policy.*

*§202.3. Management and Staff Responsibilities.*

*§202.4. Managing Security Risks.*

*§202.5. Managing Physical Security.*

*§202.6. Business Continuity Planning.*

*§202.7. Information Resources Security Safeguards.*

*§202.8. User Security Practices.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 26, 2004.

TRD-200405393
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

## CHAPTER 202. INFORMATION SECURITY STANDARDS

The Department of Information Resources (department) proposes to publish for public comment proposed new 1 TAC Chapter 202, §§202.1 - 202.3, 202.20 - 202.27 and 202.70 - 202.77 in their entirety, as a portion of the rules affected by the implementation of §2054.121, Texas Government Code, Coordination with Institutions of Higher Education. The department and the Information Technology Council of Higher Education identified former department Chapter 202 as needing restructuring to clarify the instances in which the rule will apply to Institutions of Higher Education. The department intends to publish repeal of Chapter 202 by separate action.

Section 202.1(7) was updated to cite to the correct section of the Information Resources Management Act for the definition of "information resources." In new Chapter 202, relating to the management of security risks, §202.22(b) (for state agencies) and §202.72(b) (for institutions of higher education) were changed to provide that system changes could cause an entire classification to move to another risk category, either higher or lower. Sections 202.25 (for state agencies) and 202.75 (for institutions of higher education) were altered to clarify that the security safeguards should apply when indicated by documented security risk management decisions. Sections 202.25(c)(5) (for state agencies) and 202.75(c)(5) (for institutions of higher education) were altered to provide accurate cross references to newly published 1 TAC Chapter 203, which is updated to refer to the Uniform Electronic Transactions Act (UETA) guidelines. There have been no other substantive changes to the rule, other than the restructuring.

The department disagreed with a recommendation by the Information Technology Council of Higher Education to extend the deadline for reporting security incidents to the department from five business days to nine working days, therefore, no change to the reporting requirements in the existing rule are being proposed in this rule.

The new rules are structured into three subchapters. Subchapter A, §§202.1 - 202.3 are definitions. Subchapter B, §§202.20 - 202.27 contains the rules that apply only to state agencies. Subchapter C, §§202.70 - 202.77 contains the rules that apply only to institutions of higher education. These rules are promulgated to implement §2054.121, Texas Government Code, which requires the repeal and readoption of rules in a manner that expressly applies to institutions of higher education, and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

The rules being proposed for publication underwent the analysis required by §2054.121, Texas Government Code, and were found to have no impact on the mission of higher education, student populations, and federal grant requirements. Alternate methods of implementation of this policy were considered to achieve the purpose of the rules and no alternates were found. The department did consider exempting institutions of higher education from all or part of the requirements of the rules. The department believes that application of the rules to institutions of higher education is in the public interest.

Mr. Edward Block, acting Director of Security for the department, has determined that there will be no fiscal implications for state or local government if the proposed rules are adopted. The public will benefit by the adoption.

Mr. Block believes there will be no different effect on small businesses than there is on large businesses and that there is no additional anticipated economic cost to persons if the rules are adopted.

Comments on the proposed adoption of the rules may be submitted to Renée Mauzy, General Counsel, Department of Information Resources, via mail to P.O. Box 13564, Austin, Texas 78711, or electronically to renee.mauzy@dir.state.tx.us no later than 5:00 p.m. CST, within 30 days after publication.

## SUBCHAPTER A. DEFINITIONS

**1 TAC §§202.1 - 202.3**

The rules are proposed under §2054.121 and §2054.052(a), Texas Government Code.

*§202.1. Applicable Terms And Technologies For Information Security.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Access--To approach, interact with, or otherwise make use of information resources.

(2) Business Continuity Planning--The process of identifying critical data systems and business functions, analyzing the risks and probabilities of service disruptions and developing procedures to restore those systems and functions.

(3) Confidential Information--Information that is excepted from disclosure requirements under the provisions of applicable state or federal law, e.g. the Texas Public Information Act.

(4) Control--Any action, device, policy, procedure, technique, or other measure that improves security.

(5) Custodian of an Information Resource--A person responsible for implementing owner-defined controls and access to an information resource.

(6) Department--The Department of Information Resources.

(7) Information Resources--Is defined in §2054.003(7), Texas Government Code and/or other applicable state or federal legislation.

(8) Information Security Program--The elements, structure, objectives, and resources that establish an information resources security function within an institution of higher education, or state agency.

(9) Mission Critical Information--Information that is defined by the institution of higher education, or state agency to be essential to the institution of higher education, or state agency function(s).

(10) Owner of an Information Resource--A person responsible:

(A) For a business function; and

(B) For determining controls and access to information resources supporting that business function.

(11) Platform--The foundation technology of a computer system. The hardware and systems software that together provide support for an application program. (Ref: Practices for Protecting Information Resources Assets.)

(12) Security Incident--An event which results in unauthorized access, loss, disclosure, modification, disruption, or destruction of information resources whether accidental or deliberate.

(13) Security Risk Analysis--The process of identifying and documenting vulnerabilities and applicable threats to information resources.

(14) Security Risk Assessment--The process of evaluating the results of the risk analysis by projecting losses, assigning levels of risk, and recommending appropriate measures to protect information resources.

(15) Security Risk Management--Decisions to accept exposures or to reduce vulnerabilities.

(16) Test--A simulated or documented "real-live" incident that has occurred.

(17) User of an Information Resource--An individual or automated application authorized to access an information resource in accordance with the owner-defined controls and access rules.

(18) Vulnerability Report-A computer related report containing information described in §2054.077(b), Government Code, as that section may be amended from time to time.

*§202.2. Institution Of Higher Education.*
A university system or institution of higher education as defined by §61.003, Education Code.

*§202.3. State Agency.*
Means a department, commission, other than an institution of higher education, board, office, council, authority, or other agency in the executive or judicial branch of state government, that is created by the constitution or a statute of this state.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405435
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

## SUBCHAPTER B. SECURITY STANDARDS FOR STATE AGENCIES

**1 TAC §§202.20 - 202.27**

The rules are proposed under §2054.121 and §2054.052(a), Texas Government Code.

*§202.20. Security Standards Policy.*
The following are policies of the State of Texas that apply to all state agencies. Each state agency should apply the Security Standards Policy based on documented security risk management decisions:

(1) Information resources residing in the various state agencies of state government are strategic and vital assets belonging to the people of Texas. These assets must be available and protected commensurate with the value of the assets. Measures shall be taken to protect these assets against unauthorized access, disclosure, modification or destruction, whether accidental or deliberate, as well as to assure the availability, integrity, utility, authenticity, and confidentiality of information. Access to state information resources must be appropriately managed.

(2) All state agencies are required to have an information resources security program consistent with these standards, and the state agency's head is responsible for the protection of information resources.

(3) All individuals are accountable for their actions relating to information resources. Information resources shall be used only for

intended purposes as defined by the state agency and consistent with applicable laws.

(4) Risks to information resources must be managed. The expense of security safeguards must be commensurate with the value of the assets being protected.

(5) The integrity of data, its source, its destination, and processes applied to it must be assured. Changes to data must be made only in an authorized manner.

(6) Information resources must be available when needed. Continuity of information resources supporting critical governmental services must be ensured in the event of a disaster or business disruption.

(7) Security requirements shall be identified, documented, and addressed in all phases of development or acquisition of information resources.

(8) State agencies must ensure adequate controls and separation of duties for tasks that are susceptible to fraudulent or other unauthorized activity.

*§202.21. Management And Staff Responsibilities.*

(a) The state agency head or his or her designated representative(s) shall review and approve ownership of information resources and their associated responsibilities.

(b) The owner of an information resource, with the state agency head's or his or her designated representative's(s') concurrence, is responsible for classifying business functional information. State agencies are responsible for defining all information classification categories except the Confidential Information category, which is defined in Subchapter A of this chapter, and establishing the appropriate controls for each.

(c) Owners, custodians, and users of information resources shall be identified, and their responsibilities defined and documented by the state agency. In cases where information resources are used by more than one major business function, the owners shall reach consensus and advise the information security function as to the designated owner with responsibility for the information resources. The following distinctions among owner, custodian, and user responsibilities should guide determination of these roles:

(1) Owner Responsibilities. The owner or his or her designated representatives(s) are responsible for and authorized to:

(A) Approve access and formally assign custody of an information resources asset;

(B) Determine the asset's value;

(C) Specify data control requirements and convey them to users and custodians;

(D) Specify appropriate controls, based on risk assessment, to protect the state's information resources from unauthorized modification, deletion, or disclosure. Controls shall extend to information resources outsourced by the state agency.

(E) Confirm that controls are in place to ensure the accuracy, authenticity, and integrity of data.

(F) Ensure compliance with applicable controls;

(G) Assign custody of information resources assets and provide appropriate authority to implement security controls and procedures.

(H) Review access lists based on documented security risk management decisions.

(2) Custodian responsibilities. Custodians of information resources, including entities providing outsourced information resources services to state agencies must:

(A) Implement the controls specified by the owner(s);

(B) Provide physical and procedural safeguards for the information resources;

(C) Assist owners in evaluating the cost-effectiveness of controls and monitoring; and

(D) Implement the monitoring techniques and procedures for detecting, reporting, and investigating incidents.

(3) User responsibilities. Users of information resources shall use the resources only for defined purposes and comply with established controls.

(d) The Information Security Officer. Each state agency head or his or her designated representative(s) shall designate an information security officer to administer the state agency information security program. The Information Security Officer shall report to executive level management.

(1) It shall be the duty and responsibility of this individual to develop and recommend policies and establish procedures and practices, in cooperation with owners and custodians, necessary to ensure the security of information resources assets against unauthorized or accidental modification, destruction, or disclosure.

(2) The Information Security Officer shall document and maintain an up-to-date information security program. The information security program must be approved by the state agency head or his or her designated representative(s).

(3) The Information Security Officer is responsible for monitoring the effectiveness of defined controls for mission critical information.

(4) The Information Security Officer shall report, at least annually, to the state agency head or his or her designated representative(s) the status and effectiveness of information resources security controls.

(e) A review of the state agency's information security program for compliance with these standards will be performed at least annually, based on business risk management decisions, by individual(s) independent of the information security program and designated by the state agency head or his or her designated representative(s).

*§202.22. Managing Security Risks.*

(a) A security risk analysis of information resources shall be performed and documented. The security risk analysis shall be updated based on the inherent risk. The inherent risk and frequency of the security risk analysis will be ranked, at a minimum, as either "High," "Medium," or "Low," based primarily on the following criteria:

(1) High Risk-annual assessment - Information resources that;

(A) Involve large dollar amounts or significantly important transactions, such that business or government processes would be hindered or an impact on public health or safety would occur if the transactions were not processed timely and accurately, or

(B) Contain confidential or sensitive data such that unauthorized disclosure would cause real damage to the parties involved, or

(C) Impact a large number of people or interconnected systems.

(2) Medium Risk-biennial assessment - Information resources that;

(A) Transact or control a moderate or low dollar value, or

(B) Data items that could potentially embarrass or create problems for the parties involved if released, or

(C) Impact a moderate proportion of the customer base.

(3) Low Risk-biennial assessment - Information resources that;

(A) Publish generally available public information, or

(B) Result in a relatively small impact on the population.

(b) A system change could cause the overall classification to move to another risk level.

(c) Security risk assessment results, vulnerability reports, and similar information shall be documented and presented to the state agency head or his or her designated representative. The state agency head or his or her designated representative(s) shall make the final security risk management decisions to either accept exposures or protect the data according to its value/sensitivity. The state agency head or his or her designated representative(s) must approve the security risk management plan. This information may be exempt from disclosure under §2054.77(c), Government Code.

*§202.23. Managing Physical Security.*

(a) Physical access to mission critical information resources facilities shall be managed and documented by the state agency head or his or her designated representative(s).

(b) Reviews of physical security measures for information resources shall be conducted annually by the state agency head or designated representative(s).

(c) Information resources shall be protected from environmental hazards. Designated employees shall be trained to monitor environmental control procedures and equipment and shall be trained in desired response in case of emergencies or equipment problems.

(d) Written emergency procedures shall be developed, updated, and tested at least annually.

(e) State agencies will refer to the State Office of Risk Management for applicable rules and guidelines.

*§202.24. Business Continuity Planning.*

(a) Business Continuity Planning covers all business functions of an state agency and it is a business management responsibility. State agencies should maintain a written Business Continuity Plan so that the effects of a disaster will be minimized, and the state agency will be able to either maintain or quickly resume mission-critical functions. The state agency head or his or her designated representative(s) shall approve the Plan. The Plan shall be distributed to key personnel and a copy stored offsite. Elements of the Plan for information resources shall include:

(1) Business Impact Analysis to systematically assess the potential impacts of a loss of business functionality due to an interruption of computing and/or infrastructure support services resulting from various events or incidents. The analysis shall address maximum tolerable downtime for time-critical support services and resources including, but not limited to:

(A) Personnel;

(B) Facilities;

(C) Technology platforms (all computer systems);

(D) Software;

(E) Information resources security utilities;

(F) Data networks and equipment;

(G) Voice networks and equipment;

(H) Vital electronic records and/or data.

(2) Security Risk Assessment to weigh the cost of implementing preventative measures against the risk of loss from not taking action.

(3) Recovery Strategy to appraise recovery alternatives and alternative cost-estimates which shall be presented to management.

(4) Implementation, testing, and maintenance management program addressing the initial and ongoing testing and maintenance activities of the Plan.

(5) Disaster Recovery Plan-Each state agency shall maintain a written disaster recovery plan for information resources. The disaster recovery plan will:

(A) Contain measures which address the impact and magnitude of loss or harm that will result from an interruption;

(B) Identify recovery resources and a source for each;

(C) Contain step-by-step instructions for implementing the Plan;

(D) Be maintained to ensure currency; and

(E) Be tested either formally or informally at least annually.

(b) Mission critical data shall be backed up on a scheduled basis and stored off site in a secure, environmentally safe, locked facility accessible only to authorized state agency representatives.

*§202.25. Information Resources Security Safeguards.*

(a) Access to information resources shall be managed to ensure authorized use.

(b) Confidentiality of data and systems.

(1) Confidential information shall be accessible only to authorized users. Information containing any confidential data shall be identified, documented, and protected in its entirety.

(2) Information resources assigned from one state agency to another shall be protected in accordance with the conditions imposed by the providing state agency.

(c) Identification/Authentication.

(1) Each user of information resources shall be assigned a unique identifier except for situations where risk analysis demonstrates no need for individual accountability of users. User identification shall be authenticated before the information resources system may grant that user access.

(2) A user's access authorization shall be appropriately modified or removed when the user's employment or job responsibilities within the state agency change.

(3) Information resources systems shall contain authentication controls that comply with documented state agency security risk management decisions.

(4) Information resources systems which use passwords shall be based on industry best practices on password usage and documented state agency security risk management decisions.

(5) For electronic communications where the identity of a sender or the contents of a message must be authenticated, the use of digital signatures is encouraged. Agencies should refer to guidelines and rules issued by the department for further information. (Ref. 1 T.A.C., Chapter 203. Additional information and guidelines are included in PART 2: Risks Pertaining to Electronic Transactions and Signed Records in "The Guidelines for the Management of Electronic Transactions and Signed Records" that are available at http://www.dir.state.tx.us/standards/UETA_Guideline.htm.).

(d) Encryption. Encryption for storage and transmission of information shall be used based on documented institution security risk management decisions.

(e) Auditing.

(1) Information resources systems must provide the means whereby authorized personnel have the ability to audit and establish individual accountability for any action that can potentially cause access to, generation of, modification of, or effect the release of confidential information.

(2) Appropriate audit trails shall be maintained to provide accountability for updates to mission critical information, hardware and software and for all changes to automated security or access rules.

(3) Based on the security risk assessment, a sufficiently complete history of transactions shall be maintained to permit an audit of the information resources system by logging and tracing the activities of individuals through the system.

(f) Systems development, acquisition, and testing.

(1) Test functions shall be kept either physically or logically separate from production functions. Copies of production data shall not be used for testing unless the data has been declassified or unless all state and independent contractor employees involved in testing are otherwise authorized access to the data.

(2) Information security and audit controls shall be included in all phases of the system development lifecycle or acquisition process.

(3) All security-related information resources changes shall be approved by the owner through a quality assurance process. Approval must occur prior to implementation by the state agency or independent contractors.

(g) Security Policies. Each state agency head or his/her designated representative and information security officer shall create, distribute, and implement information security policies. The following policies are recommended; however, state agencies may elect not to implement some of the policies based on documented risk management decisions and business functions. These policies are not all inclusive and may be combined topically.

(1) Acceptable Use--Defines scope, behavior, and practices; compliance monitoring pertaining to users of information resources.

(2) Account Management--Establishes the rules for administration of user accounts.

(3) Administrator/Special Access--Establishes rules for the creation, use, monitoring, control, and removal of accounts with special access privileges.

(4) Backup/Recovery--Establishes the rules for the backup, storage, and recovery of electronic information.

(5) Change Management--Establishes the process for controlling modifications to hardware, software, firmware, and documentation to ensure the information resources are protected against improper modification before, during, and after system implementation.

(6) Email--Establishes prudent and acceptable practices regarding the use of email for the sending, receiving, or storing of electronic mail. Ensures compliance with applicable statutes, regulations, and mandates.

(7) Incident Management--Describes the requirements for dealing with computer security incidents including prevention, detection, response, and remediation.

(8) Internet/Intranet Use--Establishes prudent and acceptable practices regarding the use of the Internet and Intranet.

(9) Intrusion Detection--Establishes requirements for auditing, logging, and monitoring to detect attempts to bypass the security mechanisms of information resources.

(10) Network Access--Establishes the rules for the access and use of the network infrastructure.

(11) Network Configuration--Establishes the rules for the maintenance, expansion, and use of the network infrastructure.

(12) Password/Authentication--Establishes the rules for the creation, use, distribution, safeguarding, termination, and recovery of user authentication mechanisms.

(13) Physical Access--Establishes the rules for the granting, control, monitoring, and removal of physical access to information resources.

(14) Portable Computing--Establishes the rules for the use of mobile computing devices and their connection to the network.

(15) Privacy--Methodologies used to establish the limits and expectations regarding privacy for the users of information resources.

(16) Security Monitoring--Defines a process that ensures information resources security controls are in place, are effective, and are not being bypassed.

(17) Security Awareness and Training--Establishes the requirements to ensure each user of information resources receives adequate training on computer security issues.

(18) Platform Hardening--Establishes the requirements for installing and maintaining the integrity of a platform in a secure fashion.

(19) Authorized Software--Establishes the rules for software use on information resources.

(20) System Development and Acquisition--Describes the security and business continuity requirements in the systems development and acquisition life cycle.

(21) Vendor Access--Establishes the rules for vendor access to information resources, support services (Air Conditioning, Universal Power Supply, Power Distribution Unit, fire suppression, etc.), and vendor responsibilities for protection of information.

(22) Malicious Code--Describes the requirements for prevention, detection, response, and recovery from the effects of malicious code (including but not limited to viruses, worms, Trojan Horses, and unauthorized code used to circumvent safeguards.)

(h) Perimeter Security Controls. Each state agency head or his/her designated representative and information security officer shall establish a perimeter protection strategy to include some or all of the following components.

(1) DMZ (Demilitarized Zone)--The DMZ is the network area created between the public Internet and internal private network(s). This neutral zone is usually delineated by some combination of routers, firewalls, and bastion hosts. Typically, the DMZ contains devices accessible to Internet traffic, such as Web (HTTP) servers, FTP servers, SMTP (email) servers, and DNS servers.

(2) Firewall--A system designed to prevent unauthorized access to or from a private network. Firewalls can be implemented in both hardware and software, or a combination of both and are used to prevent unauthorized Internet users from accessing private networks connected to the Internet, especially Intranets. They can also regulate traffic between networks within the same state agency.

(3) Intrusion Detection System--Hardware and/or software which is installed on a network and compares network traffic and host log entries to the known and likely methods of attackers. Suspicious activities trigger administrator alarms and other configurable responses.

(4) Router--A device or, in some cases, software in a computer, that determines the next network point to which a packet should be forwarded toward its destination. The router is connected to at least two networks and decides which way to send each information packet based on its current understanding of the state of the networks to which it is connected. A router is located at any gateway where one network meets another.

(i) System Identification/Logon Banner. System identification/logon banners shall have warning statements that include the following topics:

(1) Unauthorized use is prohibited;

(2) Usage may be subject to security testing and monitoring;

(3) Misuse is subject to criminal prosecution; and

(4) No expectation of privacy except as otherwise provided by applicable privacy laws.

*§202.26. Security Incidents.*

(a) Security incidents shall be promptly investigated and documented. Security incidents shall be reported to the department within twenty-four hours if there is a substantial likelihood that such incidents are critical in nature and could be propagated to other state systems beyond the control of the state agency.

(b) If criminal action is suspected, the state agency must contact the appropriate law enforcement and investigative authorities immediately.

(c) Each state agency shall provide summary reports to the department that contain information concerning violations of security policy of which the state agency has become aware. A state agency shall not be required to report security incidents unless it reasonably believes such incidents may involve criminal activity under Texas Penal Code Chapters 33 (Computer Crimes) or 33A (Telecommunications Crimes). Reports should include:

(1) Type of activity, including but not limited to:

(A) Unwanted disruption or denial of service;

(B) Unauthorized use of a system for the processing or storage of data; and

(C) Changes made to system hardware, firmware, data or software without the state agency's effective consent.

(2) Time elapsed between initial detection of incident and containment of the security breach or full restoration of adversely affected functions, whichever is later;

(3) Description of the state agency's response to the incident; and

(4) Estimated total cost incurred by the state agency in containing the security incident or restoring adversely affected functions.

(d) Reports must be sent to the department on a monthly basis no later than the fifth (5th) working day after the end of the month. Information shall be reported in the form and manner specified by the department.

(e) The department shall establish internal security procedures regarding the receipt and maintenance of information pertaining to security incidents. The department shall instruct state agencies as to the manner in which they must report such information.

*§202.27. User Security Practices.*

(a) All authorized users (including, but not limited to, state agency personnel, temporary employees, and employees of independent contractors) of the state agency's information resources, shall formally acknowledge that they will comply with the security policies and procedures of the state agency or they shall not be granted access to information resources. The state agency head or his or her designated representative will determine the method of acknowledgement and how often this acknowledgement must be re-executed by the user to maintain access to state agency information resources.

(b) Devices designated for public access shall be configured to enforce security policies and procedures without the requirement for formal acknowledgement.

(c) Each state agency head or his/her designated representative and information security officer shall establish a strategy for the use of written non-disclosure agreements to protect information from disclosure by employees and contractors prior to granting access.

(d) State agencies shall provide an ongoing information security awareness education program for all users.

(e) State agencies shall use new employee orientation to introduce information security awareness and inform new employees of information security policies and procedures. The rules are proposed under §§2054.121 and 2054.052(a), Texas Government Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405436
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

## SUBCHAPTER C. SECURITY STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION

**1 TAC §§202.70 - 202.77**

The rules are proposed under §2054.121 and §2054.052(a), Texas Government Code.

*§202.70. Security Standards Policy.*

The following are policies of the State of Texas that apply to all state institutions of higher education. Each institution of higher education should apply the Security Standards Policy based on documented security risk management decisions:

(1) Information resources residing in the various institutions of higher education of state government are strategic and vital assets belonging to the people of Texas. These assets must be available and protected commensurate with the value of the assets. Measures shall be taken to protect these assets against unauthorized access, disclosure, modification or destruction, whether accidental or deliberate, as well as to assure the availability, integrity, utility, authenticity, and confidentiality of information. Access to state information resources must be appropriately managed.

(2) All institutions of higher education are required to have an information resources security program consistent with these standards, and the institution of higher education head is responsible for the protection of information resources.

(3) All individuals are accountable for their actions relating to information resources. Information resources shall be used only for intended purposes as defined by the institution of higher education and consistent with applicable laws.

(4) Risks to information resources must be managed. The expense of security safeguards must be commensurate with the value of the assets being protected.

(5) The integrity of data, its source, its destination, and processes applied to it must be assured. Changes to data must be made only in an authorized manner.

(6) Information resources must be available when needed. Continuity of information resources supporting critical governmental services must be ensured in the event of a disaster or business disruption.

(7) Security requirements shall be identified, documented, and addressed in all phases of development or acquisition of information resources.

(8) Institutions of higher education must ensure adequate controls and separation of duties for tasks that are susceptible to fraudulent or other unauthorized activity.

*§202.71. Management and Staff Responsibilities.*

(a) The institution of higher education head or his or her designated representative(s) shall review and approve ownership of information resources and their associated responsibilities.

(b) The owner of an information resource, with the institution of higher education head's or his or her designated representative(s') concurrence, is responsible for classifying business functional information. Institutions of higher education are responsible for defining all information classification categories except the Confidential Information category, which is defined in Subchapter A, and establishing the appropriate controls for each.

(c) Owners, custodians, and users of information resources shall be identified, and their responsibilities defined and documented by the institution of higher education. In cases where information resources are used by more than one major business function, the owners shall reach consensus and advise the information security function as to the designated owner with responsibility for the information resources. The following distinctions among owner, custodian, and user responsibilities should guide determination of these roles:

(1) Owner Responsibilities. The owner or his or her designated representatives(s) are responsible for and authorized to:

(A) Approve access and formally assign custody of an information resources asset;

(B) Determine the asset's value;

(C) Specify data control requirements and convey them to users and custodians;

(D) Specify appropriate controls, based on risk assessment, to protect the state's information resources from unauthorized modification, deletion, or disclosure. Controls shall extend to information resources outsourced by the institution of higher education.

(E) Confirm that controls are in place to ensure the accuracy, authenticity, and integrity of data.

(F) Ensure compliance with applicable controls;

(G) Assign custody of information resources assets and provide appropriate authority to implement security controls and procedures.

(H) Review access lists based on documented security risk management decisions.

(2) Custodian responsibilities. Custodians of information resources, including entities providing outsourced information resources services to state institutions of higher education must:

(A) Implement the controls specified by the owner(s);

(B) Provide physical and procedural safeguards for the information resources;

(C) Assist owners in evaluating the cost-effectiveness of controls and monitoring; and

(D) Implement the monitoring techniques and procedures for detecting, reporting, and investigating incidents.

(3) User responsibilities. Users of information resources shall use the resources only for defined purposes and comply with established controls.

(d) The Information Security Officer. Each institution of higher education head or his or her designated representative(s) shall designate an information security officer to administer the institution of higher education information security program. The Information Security Officer shall report to senior management.

(1) It shall be the duty and responsibility of this individual to develop and recommend policies and establish procedures and practices, in cooperation with owners and custodians, necessary to ensure the security of information resources assets against unauthorized or accidental modification, destruction, or disclosure.

(2) The Information Security Officer shall document and maintain an up-to-date information security program. The information security program must be approved by the institution of higher education head or his or her designated representative(s).

(3) The Information Security Officer is responsible for monitoring the effectiveness of defined controls for mission critical information.

(4) The Information Security Officer shall report, at least annually, to the institution of higher education head or his or her designated representative(s) the status and effectiveness of information resources security controls.

(e) A review of the institution of higher education's information security program for compliance with these standards will be performed at least biennially, based on business risk management decisions, by individual(s) independent of the information security program and designated by the institution of higher education head or his or her designated representative(s).

*§202.72. Managing Security Risks.*

(a) A security risk analysis of information resources shall be performed and documented. The security risk analysis shall be updated based on the inherent risk. The inherent risk and frequency of the security risk analysis will be ranked, at a minimum, as either "High," "Medium," or "Low," based primarily on the following criteria:

(1) High Risk-annual assessment - Information resources that;

(A) Involve large dollar amounts or significantly important transactions, such that business or government processes would be hindered or an impact on public health or safety would occur if the transactions were not processed timely and accurately, or

(B) Contain confidential or sensitive data such that unauthorized disclosure would cause real damage to the parties involved, or

(C) Impact a large number of people or interconnected systems.

(2) Medium Risk-biennial assessment - Information resources that;

(A) Transact or control a moderate or low dollar value, or

(B) Data items that could potentially embarrass or create problems for the parties involved if released, or

(C) Impact a moderate proportion of the customer base.

(3) Low Risk-biennial assessment - Information resources that;

(A) Publish generally available public information, or

(B) Result in a relatively small impact on the population.

(b) A system change could cause the overall classification to move to another risk level.

(c) Security risk assessment results, vulnerability reports, and similar information shall be documented and presented to the institution of higher education head or his or her designated representative. The institution of higher education head or his or her designated representative(s) shall make the final security risk management decisions to either accept exposures or protect the data according to its value/sensitivity. The institution of higher education head or his or her designated representative(s) must approve the security risk management plan. This information may be exempt from disclosure under §2054.77(c), Government Code.

*§202.73. Managing Physical Security.*

(a) Physical access to mission critical information resources facilities shall be managed and documented by the institution of higher education head or his or her designated representative(s).

(b) Reviews of physical security measures for information resources shall be conducted annually by the institution of higher education head or designated representative(s).

(c) Information resources shall be protected from environmental hazards. Designated employees shall be trained to monitor environmental control procedures and equipment and shall be trained in desired response in case of emergencies or equipment problems.

(d) Written emergency procedures shall be developed, updated, and tested at least annually.

(e) Institutions of higher education will refer to the State Office of Risk Management for applicable rules and guidelines.

*§202.74. Business Continuity Planning.*

(a) Business Continuity Planning covers all business functions of an institution of higher education and it is a business management responsibility. Institutions of higher education should maintain a written Business Continuity Plan so that the effects of a disaster will be minimized, and the institution of higher education will be able to either maintain or quickly resume mission-critical functions. The institution of higher education head or his or her designated representative(s)shall approve the Plan. The Plan shall be distributed to key personnel and a copy stored offsite. Elements of the Plan for information resources shall include:

(1) Business Impact Analysis to systematically assess the potential impacts of a loss of business functionality due to an interruption of computing and/or infrastructure support services resulting from various events or incidents. The analysis shall address maximum tolerable downtime for time-critical support services and resources including, but not limited to:

(A) Personnel;

(B) Facilities;

(C) Technology platforms (all computer systems);

(D) Software;

(E) Information resources security utilities;

(F) Data networks and equipment;

(G) Voice networks and equipment;

(H) Vital electronic records and/or data.

(2) Security Risk Assessment to weigh the cost of implementing preventative measures against the risk of loss from not taking action.

(3) Recovery Strategy to appraise recovery alternatives and alternative cost-estimates which shall be presented to management.

(4) Implementation, testing, and maintenance management program addressing the initial and ongoing testing and maintenance activities of the Plan.

(5) Disaster Recovery Plan-Each institution of higher education shall maintain a written disaster recovery plan for information resources. The disaster recovery plan will:

(A) Contain measures which address the impact and magnitude of loss or harm that will result from an interruption;

(B) Identify recovery resources and a source for each;

(C) Contain step-by-step instructions for implementing the Plan;

(D) Be maintained to ensure currency; and

(E) Be tested either formally or informally at least annually.

(b) Mission critical data shall be backed up on a scheduled basis and stored off site in a secure, environmentally safe, locked facility accessible only to authorized institution of higher education representatives.

*§202.75. Information Resources Security Safeguards.*

The following Information Resources Security Safeguards should apply to state institutions of higher education based on documented security risk management decisions.

(1) Access to information resources shall be managed to ensure authorized use.

(2) Confidentiality of data and systems.

(A) Confidential information shall be accessible only to authorized users. Information containing any confidential data shall be identified, documented, and protected in accordance with 1 TAC §202.70(1).

(B) Information resources assigned from one institution of higher education to another shall be protected in accordance with the conditions imposed by the providing institution of higher education.

(3) Identification/Authentication.

(A) Each user of information resources shall be assigned a unique identifier except for situations where risk analysis demonstrates no need for individual accountability of users. User identification shall be authenticated before the information resources system may grant that user access.

(B) A user's access authorization shall be appropriately modified or removed when the user's employment or job responsibilities within the institution of higher education change.

(C) Information resources systems shall contain authentication controls that comply with documented institution of higher education security risk management decisions.

(D) Information resources systems which use passwords shall be based on industry best practices on password usage and documented institution of higher education security risk management decisions.

(E) For electronic communications where the identity of a sender or the contents of a message must be authenticated, the use of digital signatures is encouraged. Institutions of higher education should refer to guidelines and rules issued by the department for further information. (Ref. 1 TAC Chapter 203. Additional information and guidelines are included in PART 2: Risks Pertaining to Electronic Transactions and Signed Records in "The Guidelines for the Management of Electronic Transactions and Signed Records" that are available at http://www.dir.state.tx.us/standards/UETA_Guideline.htm.).

(4) Encryption. Encryption for storage and transmission of information shall be used based on documented institution of higher education security risk management decisions.

(5) Auditing.

(A) Information resources systems must provide the means whereby authorized personnel have the ability to audit and establish individual accountability for any action that can potentially cause access to, generation of, modification of, or effect the release of confidential information.

(B) Appropriate audit trails shall be maintained to provide accountability for updates to mission critical information, hardware and software and for all changes to automated security or access rules.

(C) Based on the security risk assessment, a sufficiently complete history of transactions shall be maintained to permit an audit of the information resources system by logging and tracing the activities of individuals through the system.

(6) Systems development, acquisition, and testing.

(A) Test functions shall be kept either physically or logically separate from production functions. Copies of production data shall not be used for testing unless the data has been declassified or unless all state and independent contractor employees involved in testing are otherwise authorized access to the data.

(B) Information security and audit controls shall be included in all phases of the system development lifecycle or acquisition process.

(C) All security-related information resources changes shall be approved by the owner through a quality assurance process. Approval must occur prior to implementation by the institution of higher education or independent contractors.

(7) Security Policies. Each institution of higher education head or his/her designated representative and information security officer shall create, distribute, and implement information security policies. The following policies are recommended; however, institutions of higher education may elect not to implement some of the policies based on documented security risk management decisions and business functions. These policies are not all inclusive and may be combined topically.

(A) Acceptable Use--Defines scope, behavior, and practices; compliance monitoring pertaining to users of information resources.

(B) Account Management--Establishes the rules for administration of user accounts.

(C) Administrator/Special Access--Establishes rules for the creation, use, monitoring, control, and removal of accounts with special access privileges.

(D) Backup/Recovery--Establishes the rules for the backup, storage, and recovery of electronic information.

(E) Change Management--Establishes the process for controlling modifications to hardware, software, firmware, and documentation to ensure the information resources are protected against improper modification before, during, and after system implementation.

(F) Email--Establishes prudent and acceptable practices regarding the use of email for the sending, receiving, or storing of electronic mail. Ensures compliance with applicable statutes, regulations, and mandates.

(G) Incident Management--Describes the requirements for dealing with computer security incidents including prevention, detection, response, and remediation.

(H) Internet/Intranet Use--Establishes prudent and acceptable practices regarding the use of the Internet and Intranet.

(I) Intrusion Detection--Establishes requirements for auditing, logging, and monitoring to detect attempts to bypass the security mechanisms of information resources

(J) Network Access--Establishes the rules for the access and use of the network infrastructure.

(K) Network Configuration--Establishes the rules for the maintenance, expansion, and use of the network infrastructure.

(L) Password/Authentication--Establishes the rules for the creation, use, distribution, safeguarding, termination, and recovery of user authentication mechanisms.

(M) Physical Access--Establishes the rules for the granting, control, monitoring, and removal of physical access to information resources.

(N) Portable Computing--Establishes the rules for the use of mobile computing devices and their connection to the network.

(O) Privacy--Methodologies used to establish the limits and expectations regarding privacy for the users of information resources.

(P) Security Monitoring--Defines a process that ensures information resources security controls are in place, are effective, and are not being bypassed.

(Q) Security Awareness and Training-Establishes the requirements to ensure each user of information resources receives adequate training on computer security issues.

(R) Platform Hardening--Establishes the requirements for installing and maintaining the integrity of a platform in a secure fashion.

(S) Authorized Software--Establishes the rules for software use on information resources.

(T) System Development and Acquisition--Describes the security and business continuity requirements in the systems development and acquisition life cycle.

(U) Vendor Access--Establishes the rules for vendor access to information resources, support services (Air Conditioning, Universal Power Supply, Power Distribution Unit, fire suppression, etc.), and vendor responsibilities for protection of information.

(V) Malicious Code--Describes the requirements for prevention, detection, response, and recovery from the effects of malicious code (including but not limited to viruses, worms, Trojan Horses, and unauthorized code used to circumvent safeguards.)

(8) Perimeter Security Controls. Each institution of higher education head or his/her designated representative and information security officer shall establish a perimeter protection strategy to include some or all of the following components:

(A) DMZ (Demilitarized Zone)--The DMZ is the network area created between the public Internet and internal private network(s). This neutral zone is usually delineated by some combination of routers, firewalls, and bastion hosts. Typically, the DMZ contains devices accessible to Internet traffic, such as Web (HTTP) servers, FTP servers, SMTP (email) servers, and DNS servers.

(B) Firewall--A system designed to prevent unauthorized access to or from a private network. Firewalls can be implemented in both hardware and software, or a combination of both and are used to prevent unauthorized Internet users from accessing private networks connected to the Internet, especially Intranets. They can also regulate traffic between networks within the same institution of higher education.

(C) Intrusion Detection System--Hardware and/or software which is installed on a network and compares network traffic and host log entries to the known and likely methods of attackers. Suspicious activities trigger administrator alarms and other configurable responses.

(D) Router--A device or, in some cases, software in a computer, that determines the next network point to which a packet should be forwarded toward its destination. The router is connected to at least two networks and decides which way to send each information packet based on its current understanding of the state of the networks to which it is connected. A router is located at any gateway where one network meets another.

(9) System Identification/Logon Banner. System identification/logon banners shall have warning statements that include the following topics:

(A) Unauthorized use is prohibited;

(B) Usage may be subject to security testing and monitoring;

(C) Misuse is subject to criminal prosecution; and

(D) No expectation of privacy except as otherwise provided by applicable privacy laws.

*§202.76. Security Incidents.*

(a) Security incidents shall be promptly investigated and documented. Security incidents shall be reported to the department within twenty-four hours if the institution determines that there is a substantial likelihood that such incidents are critical in nature and could be propagated to other state systems beyond the control of the institution of higher education.

(b) If criminal action is suspected, the institution of higher education must contact the appropriate law enforcement and investigative authorities immediately.

(c) Each institution of higher education shall provide summary reports to the department that contain information concerning violations of security policy of which the institution of higher education has become aware. An institution of higher education shall not be required to report security incidents unless it reasonably believes such incidents may involve criminal activity under Texas Penal Code Chapters 33 (Computer Crimes) or 33A (Telecommunications Crimes). Reports should include:

(1) Type of activity, including but not limited to:

(A) Unwanted disruption or denial of service;

(B) Unauthorized use of a system for the processing or storage of data; and

(C) Changes made to system hardware, firmware, data or software without the institution of higher education's effective consent.

(2) Time elapsed between initial detection of incident and containment of the security breach or full restoration of adversely affected functions, whichever is later;

(3) Description of the institution of higher education's response to the incident; and

(4) Estimated total cost incurred by the institution of higher education in containing the security incident or restoring adversely affected functions.

(d) Reports must be sent to the department on a monthly basis no later than the fifth (5th) business day after the end of the month. Information shall be reported in the form and manner specified by the department.

(e) The department shall establish internal security procedures regarding the receipt and maintenance of information pertaining to security incidents. The department shall instruct institutions of higher education as to the manner in which they must report such information.

*§202.77. User Security Practices.*

(a) All authorized users (including, but not limited to, institution of higher education personnel, temporary employees, and employees of independent contractors) of the institution of higher education's information resources, shall formally acknowledge that they will comply with the security policies and procedures of the institution of higher education or they shall not be granted access to information resources. The institution of higher education head or his or her designated representative will determine the method of acknowledgement and how often this acknowledgement must be re-executed by the user to maintain access to institution of higher education information resources.

(b) Devices designated for public access shall be configured to enforce security policies and procedures without the requirement for formal acknowledgement.

(c) Each institution of higher education head or his/her designated representative and information security officer shall establish a strategy for the use of written non-disclosure agreements to protect information from disclosure by employees and contractors prior to granting access.

(d) Institutions of higher education shall provide an ongoing information security awareness education program for all users.

(e) Institutions of higher education shall use new employee orientation to introduce information security awareness and inform new employees of information security policies and procedures.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405437
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

## CHAPTER 203. MANAGEMENT OF ELECTRONIC TRANSACTIONS AND SIGNED RECORDS

**1 TAC §203.1, §203.2**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Information Resources or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Department of Information Resources (department) proposes the repeal of 1 TAC Chapter 203, §203.1 and §203.2, relating to the management of electronic transactions and signed records. By separate action, the department will publish proposed new rules that identify the standards applicable to state agencies other than institutions of higher education and the standards applicable to institutions of higher education when dealing with electronic transactions and signed records.

Dustin Lanier, Strategic Initiatives Division Director for the department, has determined that there will be no fiscal implications for state or local government if 1 TAC Chapter 203 is repealed. The public will benefit from the clarification resulting from repealing these rules and proposing new electronic records standards that distinguish between the standards applicable to state agencies other than institutions of higher education and the standards applicable to institutions of higher education.

Mr. Lanier believes there will be no different effect on small businesses than there is on large businesses since the rules do not affect businesses. He also believes there is no additional anticipated economic cost to persons if the rules are repealed.

Comments on the proposed repeal of 1 TAC Chapter 203 may be submitted to Renée Mauzy, General Counsel, Department of Information Resources, P.O. Box 13564, Austin, Texas 78711, or electronically to renee.mauzy@dir.state.tx.us no later than 5:00 p.m. CT, within 30 days of publication.

The repeal is proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act; §2054.121, Texas Government Code, which requires the department to readopt rules for them to apply to institutions of higher education; and §43.017, Business and Commerce Code, which authorizes the department to promulgate rules relating to electronic records under the Uniform Electronic Transactions Act.

Texas Government Code, Chapter 2054 and §2001.039(c) and Business and Commerce Code §43.017 are affected by the proposed repeal.

*§203.1. Definitions.*

*§203.2. Guidelines for the Management of Electronic Transactions and Signed Records.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 26, 2004.

TRD-200405394
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

## CHAPTER 203. MANAGEMENT OF ELECTRONIC TRANSACTIONS AND SIGNED RECORDS

The Department of Information Resources (department) proposes new Chapter 203, §§203.1 - 203.3, 203.20 - 203.27, and 203.40 - 203.46 in its entirety, concerning Management of Electronic Transactions and Signed Records. The new sections are proposed to comply with §2054.121, Texas Government Code, which requires the department, in coordination with the Information Technology Council of Higher Education, to review,

analyze and readopt its rules to expressly make them applicable to institutions of higher education. No substantive changes have been made to Chapter 203, except the text of former §201.14, concerning Digital Signatures, has been added.

The chapter has been restructured into subchapters to comply with §2054.121, Texas Government Code, to separately set out the rule provisions which apply to institutions of higher education from those standards that apply to all other state agencies. Subchapter A, §§203.1 - 203.3, contains definitions. Subchapter B, §§203.20 - 203.27, contains the provisions for electronic transactions that apply to state agencies that are not institutions of higher education. Subchapter C, §§203.40 - 203.46, contains the provisions that apply to institutions of higher education.

The department has conducted the analysis required by §2054.121(c), Texas Government Code and has found these rules do not have an impact on the mission of higher education, student populations and federal grant requirements. Further, the department considered and did not find that there were alternate methods of implementation available to achieve the purpose of the rule. As needed, institutions of higher education have been exempted from all or a part of the requirements of these proposed rules. The department found that the application of the rules as proposed to institutions of higher education serves the public interest.

Dustin Lanier, Strategic Initiatives Division Director for the department, has determined that for each year of the first five years the new sections will be in effect, there will be no fiscal implications for state government as a result of enforcing or administering the proposed new sections. There will be no foreseeable fiscal implications for local government as a result of enforcing or administering the proposed new sections.

Mr. Lanier has determined that for each year of the first five years the new sections will be in effect, the public will benefit by the prudent management of state electronic assets.

Mr. Lanier believes there will be no different effect on small businesses than there is on large businesses, because the rules do not apply to businesses, and that there is no additional anticipated economic cost to persons required to comply with the new sections .

Comments on proposed new Chapter 203 may be submitted to Renée Mauzy, General Counsel, Department of Information Resources, via mail to P.O. Box 13564, Austin, Texas 78711, or electronically to renee.mauzy@dir.state.tx.us no later than 5:00 p.m. CT, within 30 days after publication.

## SUBCHAPTER A. DEFINITIONS

### 1 TAC §§203.1 - 203.3

The new sections are proposed under §2054.121, Texas Government Code, which requires the department to readopt rules expressly as they apply to institutions of higher education after review and coordination with the Information Technology Council of Higher Education; §2054.052(a), Texas Government Code, which authorizes the department to promulgate rules as needed to administer the Information Resources Management Act; §43.017, Business and Commerce Code, which authorizes the department to promulgate rules relating to electronic records under the Uniform Electronic Transactions Act; and §2054.060(a), Texas Government Code, which requires the department to promulgate rules relating to the use of digital signatures by state agencies.

Texas Government Code §§2054.052(a), 2054.121 and 2054.060(a) and Business and Commerce Code §43.017 are affected by the proposed new sections.

*§203.1. Key Terms and Technologies for Electronic Transactions and Signed Records.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Asymmetric cryptosystem--A computer-based system that employs two different but mathematically related keys with the following characteristics:

(A) one key encrypts a given message;

(B) one key decrypts a given message; and

(C) the keys have the property that, knowing one key, it is computationally infeasible to discover the other key.

(2) Certificate--A message which:

(A) identifies the certification authority issuing it;

(B) names or identifies its subscriber;

(C) contains the subscriber's public key;

(D) identifies its operational period;

(E) is digitally signed by the certification authority issuing it, and

(F) conforms to ISO X.509 Version 3 standards.

(3) Certificate Manufacturer--A person that provides operational services for a Certification Authority or PKI Service Provider. The nature and scope of the obligations and functions of a Certificate Manufacturer depend on contractual arrangements between the Certification Authority or other PKI Service Provider and the Certificate Manufacturer.

(4) Certificate Policy--A document prepared by a Policy Authority that describes the parties, scope of business, functional operations, and obligations between and among PKI Service Providers and End Entities who engage in electronic transactions in a Public Key Infrastructure.

(5) Certification Authority--A person who issues a certificate.

(6) Certification practice statement-- Documentation of the practices, procedures, and controls employed by a Certification Authority.

(7) Department--Department of Information Resources

(8) Digital signature--An electronic identifier intended by the person using it to have the same force and effect as the use of a manual signature, and that complies with the requirements of this section.

(9) Digitally-signed communication--A message that has been processed by a computer in such a manner that ties the message to the individual that signed the message.

(10) Electronic--Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(11) Electronic record--A record created, generated, sent, communicated, received, or stored by electronic means.

(12) Electronic signature--An electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(13) End Entities--Subscribers or Signers and Relying Parties.

(14) Escrow agent--A person who holds a copy of a private key at the request of the owner of the private key in a trustworthy manner.

(15) Expert--A person with demonstrable skill and knowledge based on training and experience who would qualify as an expert under Rule 702 of the Texas Rules of Evidence.

(16) Handwriting measurements--The metrics of the shapes, speeds and/or other distinguishing features of a signature as the person writes it by hand with a pen or stylus on a flat surface.

(17) Key pair--A private key and its corresponding public key in an asymmetric cryptosystem. The keys have the property that the public key can verify a digital signature that the private key creates.

(18) Local government--A county, municipality, special district, or other political subdivision of this state or another state, or a combination of two or more of those entities, but excluding an agency in the judicial branch of local government.

(19) Message--A digital representation of information.

(20) Person--An individual, state agency, institution of higher education, local government, corporation, partnership, association, organization, or any other legal entity.

(21) PKI--Public Key Infrastructure.

(22) PKI Service Provider--A Certification Authority, Certificate Manufacturer, Registrar, or any other person that performs services pertaining to the issuance or verification of certificates.

(23) Policy Authority--A person with final authority and responsibility for specifying a Certificate Policy.

(24) Private key--The key of a key pair used to create a digital signature.

(25) Proof of Identification--The document or documents or other evidence presented to a Certification Authority to establish the identity of a subscriber.

(26) Public key--The key of a key pair used to verify a digital signature.

(27) Public Key Cryptography--A type of cryptographic technology that employs an asymmetric cryptosystem.

(28) Record--Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(29) Registrar--A person that gathers evidence necessary to confirm the accuracy of information to be included in a Subscriber's certificate.

(30) Relying Party--A state agency, including an institution of higher education, that has received an electronic message that has been signed with a digital signature and is in a position to rely on the message and signature.

(31) Role-based key--A key pair issued to a person to use when acting in a particular business or organizational capacity.

(32) Signature Dynamics--Measuring the way an individual writes his or her signature by hand on a flat surface and binding the measurements to a message through the use of cryptographic techniques.

(33) Signer--The person who signs a digitally signed communication with the use of an acceptable technology to uniquely link the message with the person sending it.

(34) Subscriber--A person who:

(A) is the subject listed in a certificate;

(B) accepts the certificate; and

(C) holds a private key which corresponds to a public key listed in that certificate.

(35) Technology--The computer hardware and/or software-based method or process used to create digital signatures.

(36) Transaction--An action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs, where one of the persons is a state agency, including an institution of higher education.

(37) Written electronic communication--A message that is sent by one person to another person.

*§203.2. Institution of Higher Education.*

A university system or institution of higher education as defined by §61.003, Education Code.

*§203.3. State Agency.*

A department, commission, board, office, council, authority, or other agency, other than an institution of higher education, in the executive or judicial branch of state government, that is created by the constitution or a statute of this state.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405424
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

## SUBCHAPTER B. STATE AGENCY USE OF ELECTRONIC TRANSACTIONS AND SIGNED RECORDS

**1 TAC §§203.20 - 203.27**

The new sections are proposed under §2054.121, Texas Government Code, which requires the department to readopt rules expressly as they apply to institutions of higher education after review and coordination with the Information Technology Council of Higher Education; §2054.052(a), Texas Government Code, which authorizes the department to promulgate rules as needed to administer the Information Resources Management Act; §43.017, Business and Commerce Code, which authorizes the department to promulgate rules relating to electronic records under the Uniform Electronic Transactions Act; and §2054.060(a), Texas Government Code, which requires the department to promulgate rules relating to the use of digital signatures by state agencies.

Texas Government Code §§2054.052(a), 2054.121 and 2054.060(a) and Business and Commerce Code §43.017 are affected by the proposed new sections.

*§203.20. Guidelines.*

The Guidelines for the Management of Electronic Transactions and Signed Records, which are available at http://www.dir.state.tx.us/standards/UETA_Guideline.htm were adopted by the department based on the work and recommendations of the Uniform Electronic Transactions Act Task Force. The Uniform Electronic Transactions Act Task Force was jointly created by the department and the Texas State Library and Archives Commission to advise the agencies on the rules each might adopt pursuant to Texas Business and Commerce Code, §43.017.

*§203.21. Applicability.*

The Guidelines for the Management of Electronic Transactions and Signed Records are applicable to state agencies that send and accept electronic records and electronic signatures to and from other persons and to state agencies that otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

*§203.22. Contents.*

The Guidelines for the Management of Electronic Transactions and Signed Records describe electronic records, electronic signatures and trustworthy records, describe common types of risks that pertain to electronic transactions and signed records, describe the need for, and how to conduct risk assessments, as well as how to conduct a cost/benefit analysis to determine if the electronic transaction is practical. The Guidelines also discuss risk mitigation and security relating to electronic records and signatures, and records management issues, including life cycle vs. system development life cycle, preservation of electronically signed records, and the role of records managers and auditors in the implementation of a process to accept electronically signed documents. The Guidelines include appendices that discuss current electronic signature technologies, contain a checklist for evaluating electronic signatures, discuss the technical considerations of various electronic signature alternatives and briefly comment on the International Organization for Standardization nonrepudiation model.

*§203.23. Digital Signatures.*

(a) This section applies to all written electronic communications which are sent to a state agency over the Internet or other electronic network or by another means that is acceptable to the state agency, for which the identity of the sender or the contents of the message must be authenticated, and for which no prior agreement between the sender and the receiving state agency regarding message authentication existed as of the effective date of this section. This section does not apply to or supersede the use and expansion of existing systems:

(1) for the receipt of electronically filed documents pursuant to the Texas Business and Commerce Code or other applicable statutory law where the purpose of the written electronic communication is to comply with statutory filing requirements and the receiving state agency or local government is not a party to the underlying transaction which is the subject of the communication; or

(2) for the electronic approval of payment vouchers under rules adopted by the comptroller of public accounts pursuant to applicable law.

(b) Prior to accepting a digital signature, a state agency shall ensure that the level of security used to identify the signer of a message and to transmit the signature is sufficient for the transaction being conducted. A state agency that accepts digital signatures may not effectively discourage the use of digital signatures by imposing unreasonable or burdensome requirements on persons wishing to use digital signatures to authenticate written electronic communications sent to the state agency.

(c) A state agency that accepts digital signatures shall not be required to accept a digital signature that has been created by means of a particular acceptable technology described in §203.24 of this chapter if the state agency:

(1) determines that the expense that would necessarily be incurred by the state agency in accepting such a digital signature is excessive and unreasonable;

(2) provides reasonable notice to all interested persons of the fact that such digital signatures will not be accepted, and of the basis for the determination that the cost of acceptance is excessive and unreasonable; and

(d) A state agency shall review and consider any applicable guidelines and recommendations that have been adopted by the department in determining whether and for what purposes the state agency shall accept a digital signature. A copy of such guidelines and recommendations may be obtained directly from the department, or may be obtained electronically via the World Wide Web at the following location: http://www.dir.state.tx.us.

(e) A state agency shall ensure that all written electronic communications received by the state agency and authenticated by means of a digital signature in accordance with this section, as well as any information resources necessary to permit access to the written electronic communications, are retained by the state agency as necessary to comply with applicable law pertaining to audit and records retention requirements.

*§203.24. Acceptable Digital Signature Technology.*

(a) Digital Signatures must be Created by an Acceptable Technology. For a digital signature to be valid for use by a state agency, it must be created by a technology that is accepted for use by the department pursuant to this section.

(b) Criteria for Determining if a Digital Signature Technology is Acceptable. An acceptable technology must be capable of creating signatures that conform to requirements set forth in §2054.060, Texas Government Code and the requirements of this section.

(c) List of Acceptable Technologies. The technology known as Public Key Cryptography is an acceptable technology for use by state agencies, provided that the digital signature is created consistent with the following:

(1) A public key-based digital signature must be unique to the person using it. Such a signature may be considered unique to the person using it if:

(A) the private key used to create the signature on the message is known only to the signer or, in the case of a role-based key, known only to the signer and an escrow agent acceptable to the signer and the state agency; and

(B) the digital signature is created when a person runs a message through a one-way function, creating a message digest, then encrypting the resulting message digest using an asymmetric cryptosystem and the signer's private key; and

(C) although not all digitally signed communications will require the signer to obtain a certificate, the signer is capable of being issued a certificate to certify that he or she controls the key pair used to create the signature; and

(D) it is computationally infeasible to derive the private key from knowledge of the public key.

(2) A public-key based digital signature must be capable of independent verification. Such a signature may be considered capable of independent verification if:

(A) the relying party can verify the message was digitally signed by using the signer's public key to decrypt the message; and

(B) if a certificate is a required component of a transaction with a state agency, the issuing PKI Service Provider, either through a certification practice statement, certificate policy, or through the content of the certificate itself, has identified what, if any, proof of identification it required of the signer prior to issuing the certificate.

(3) The private key of public-key based digital signature must remain under the sole control of the person using it, or in the case of a role-based key, that person and an escrow agent acceptable to that person and the state agency. Whether a signature is accompanied by a certificate or not, the person who holds the key pair, or the subscriber identified in the certificate, must exercise reasonable care to retain control of the private key and prevent its disclosure to any person not authorized to create the subscriber's digital signature.

(4) The digital signature must be linked to the message of the document in such a way that it would be computationally infeasible to change the data in the message or the digital signature without invalidating the digital signature.

*§203.25. Acceptable PKI Service Providers.*

(a) The department shall maintain an "Approved List of PKI Service Providers" authorized to issue certificates for digitally signed communications sent to state agencies or otherwise provide services in connection with the issuance of certificates. The list may include, but shall not necessarily be limited to, Certification Authorities, Certificate Manufacturers, Registrars, and/or other PKI Service Providers accepted and approved for use in connection with electronic messages transmitted to other state or federal governmental entities. A copy of such list may be obtained directly from the department, or may be obtained electronically via the World Wide Web at the following location: http://www.dir.state.tx.us/standards.

(b) State agencies shall only accept certificates from PKI Service Providers that appear on the "Approved List of PKI Service Providers."

(c) The department shall place a PKI Service Provider on the "Approved List of PKI Service Providers" after the PKI Service Provider provides the department with a copy of its current certification practice statement, if any, and a copy of an unqualified performance audit performed in accordance with standards set in the American Institute of Certified Public Accountants (AICPA) Statement on Auditing Standards No. 70 (S.A.S. 70) to ensure that the PKI Service Provider's practices and policies are consistent with the requirements of the PKI Service Provider's certification practice statement, if any, and the requirements of this section.

(d) In order to be placed on the "Approved List of PKI Service Providers" a PKI Service Provider that has been in operation for one year or less shall undergo a SAS 70 Type One audit--A Report of Policies and Procedures Placed in Operation, receiving an unqualified opinion.

(e) In order to be placed on the "Approved List of PKI Service Providers" a PKI Service Provider that has been in operation for longer than one year shall undergo a SAS 70 Type Two audit--A Report of Policies and Procedures Placed in Operation and Test of Operating Effectiveness, receiving an unqualified opinion.

(f) In lieu of the audit requirements of subsections (d) and (e) of this section, a PKI Service Provider may be placed on the "Approved List of PKI Service Providers" upon providing the department with documentation issued by a person independent of the PKI Service Provider that is indicative of the security policies and procedures actually employed by the PKI Service Provider and that is acceptable to the department in its sole discretion. The department may request additional documentation relating to policies and practices employed by the PKI Service Provider indicating the trustworthiness of the technology employed and compliance with applicable guidelines published by the department.

(g) To remain on the "Approved List of PKI Service Providers" a Certification Authority must provide proof of compliance with the audit requirements or other acceptable documentation to the department every two years after initially being placed on the list. In addition, a Certification Authority must provide a copy of any changes to its certification practice statement to the department promptly following the adoption by the Certification Authority of such changes.

(h) If the department is informed that a PKI Service Provider has received a qualified or otherwise unacceptable opinion following a required audit or if the department obtains credible information that the technology employed by the PKI Service Provider can no longer reasonably be relied upon, or if the PKI Service Provider's certification practice statement is substantially amended in a manner that causes the PKI Service Provider to be non-compliant with the audit requirements of this section, the PKI Service Provider may be removed from the "Approved List of PKI Service Providers" by the department. The effect of the removal of a PKI Service Provider from the "Approved List of PKI Service Providers" shall be to prohibit state agencies from thereafter accepting digital signatures for which the PKI Service Provider issued a certificate or provided services in connection with such issuance for so long as the PKI Service Provider is removed from the list. The removal of a PKI Service Provider from the "Approved List of PKI Service Providers" shall not, in and of itself, invalidate a digital signature for which a PKI Service Provider issued the certificate prior to its removal from the list.

*§203.26. Signature Dynamics.*

The technology known as "Signature Dynamics" is an acceptable technology for use by state agencies, provided that the signature is created consistent with the following provisions:

(1) A digital signature produced by Signature Dynamics technology must be unique to the person using it. A signature digest produced by Signature Dynamics technology may be considered unique to the person using it if:

(A) the signature digest records the handwriting measurements of the person signing the message using signature dynamics technology; and

(B) the signature digest is cryptographically bound to the handwriting measurements; and

(C) after the signature digest has been bound to the handwriting measurements, it is computationally infeasible to separate the handwriting measurements and bind them to a different signature digest.

(2) A digital signature produced by Signature Dynamics technology must be capable of independent verification. A signature digest produced by Signature Dynamics technology may be considered capable of independent verification if:

(A) the acceptor of the digitally signed message obtains the handwriting measurements for purposes of comparison; and

(B) if signature verification is a required component of a transaction with a state agency, the handwriting measurements can allow an expert handwriting and document examiner to assess the authenticity of a signature.

(3) A digital signature produced by Signature Dynamics technology must remain under the sole control of the person using it. A signature digest produced by Signature Dynamics technology may be considered to be under the sole control of the person using it if:

(A) the signature digest captures the handwriting measurements and cryptographically binds them to the message directed by the signer and to no other message; and

(B) the signature digest makes it computationally infeasible for the handwriting measurements to be bound to any other message.

(4) The signature digest produced by signature dynamics technology must be linked to the message in such a way that it would be computationally infeasible to change the data in the message or the digital signature without invalidating the digital signature.

*§203.27. Adding New Technologies.*

Provisions For Adding New Technologies to the List of Acceptable Technologies.

(1) Any person may, by providing a written request that includes a full explanation of a proposed technology which meets the requirements of this section, petition the department to review the technology. If the department determines that the technology is acceptable for use by state agencies, the department shall draft rules to add the proposed technology to the list of acceptable technologies.

(2) The department has 90 days from the date of the request to review the petition and either accept or deny it. If the department does not approve the request within 90 days, the petitioner's request shall be considered denied. If the department denies the petition, it shall notify the petitioner in writing of the reasons for denial. The petitioner may appeal the department's denial of the petition at the next board meeting.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405425
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

## SUBCHAPTER C. INSTITUTIONS OF HIGHER EDUCATION USE OF ELECTRONIC TRANSACTIONS AND SIGNED RECORDS

**1 TAC §§203.40 - 203.46**

The new sections are proposed under §2054.121, Texas Government Code, which requires the department to readopt rules expressly as they apply to institutions of higher education after review and coordination with the Information Technology Council of Higher Education; §2054.052(a), Texas Government Code, which authorizes the department to promulgate rules as needed to administer the Information Resources Management Act; §43.017, Business and Commerce Code, which authorizes the department to promulgate rules relating to electronic records under the Uniform Electronic Transactions Act; and §2054.060(a), Texas Government Code, which requires the department to promulgate rules relating to the use of digital signatures by state agencies.

Texas Government Code §§2054.052(a), 2054.121 and 2054.060(a) and Business and Commerce Code §43.017 are affected by the proposed new sections.

*§203.40. Guidelines.*

The Guidelines for the Management of Electronic Transactions and Signed Records, which are available at http://www.dir.state.tx.us/standards/UETA_Guideline.htm were adopted by the department based on the work and recommendations of the Uniform Electronic Transactions Act Task Force. The Uniform Electronic Transactions Act Task Force was jointly created by the department and the Texas State Library and Archives Commission to advise the agencies on the rules each might adopt pursuant to Texas Business and Commerce Code, §43.017.

*§203.41. Applicability.*

The Guidelines for the Management of Electronic Transactions and Signed Records are applicable to institutions of higher education that send and accept electronic records and electronic signatures to and from other persons and to other institutions of higher education and state agencies that otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

*§203.42. Contents.*

The Guidelines for the Management of Electronic Transactions and Signed Records describe electronic records, electronic signatures and trustworthy records, describe common types of risks that pertain to electronic transactions and signed records, describe the need for, and how to conduct risk assessments, as well as how to conduct a cost/benefit analysis to determine if the electronic transaction is practical. The Guidelines also discuss risk mitigation and security relating to electronic records and signatures, and records management issues, including life cycle vs. system development life cycle, preservation of electronically signed records, and the role of records managers and auditors in the implementation of a process to accept electronically signed documents. The Guidelines include appendices that discuss current electronic signature technologies, contain a checklist for evaluating electronic signatures, discuss the technical considerations of various electronic signature alternatives and briefly comment on the International Organization for Standardization nonrepudiation model.

*§203.43. Digital Signatures.*

(a) This section applies to all written electronic communications which are sent to an institution of higher education over the Internet or other electronic network or by another means that is acceptable to the institution of higher education, for which the identity of the sender or the contents of the message must be authenticated, and for which no prior agreement between the sender and the receiving institution of higher education regarding message authentication existed as of the effective date of this section. This section does not apply to or supersede the use and expansion of existing systems:

(1) for the receipt of electronically filed documents pursuant to the Texas Business and Commerce Code or other applicable statutory law where the purpose of the written electronic communication is to comply with statutory filing requirements and the receiving institution of higher education is not a party to the underlying transaction which is the subject of the communication; or

(2) for the electronic approval of payment vouchers under rules adopted by the comptroller of public accounts pursuant to applicable law.

(b) Prior to accepting a digital signature, an institution of higher education shall ensure that the level of security used to identify the signer of a message and to transmit the signature is sufficient for the transaction being conducted. An institution of higher education that accepts digital signatures may not effectively discourage the use of digital signatures by imposing unreasonable or burdensome requirements on persons wishing to use digital signatures to authenticate written electronic communications sent to the institution of higher education.

(c) An institution of higher education that accepts digital signatures shall not be required to accept a digital signature that has been created by means of a particular acceptable technology described in §203.44 of this chapter if the institution of higher education:

(1) determines that the expense that would necessarily be incurred by the institution of higher education in accepting such a digital signature is excessive and unreasonable;

(2) provides reasonable notice to all interested persons of the fact that such digital signatures will not be accepted, and of the basis for the determination that the cost of acceptance is excessive and unreasonable; and

(d) An institution of higher education shall review and consider any applicable guidelines and recommendations that have been adopted by the department in determining whether and for what purposes the institution of higher education shall accept a digital signature. A copy of such guidelines and recommendations may be obtained directly from the department, or may be obtained electronically via the World Wide Web at the following location: http://www.dir.state.tx.us.

(e) An institution of higher education shall ensure that all written electronic communications received by it and authenticated by means of a digital signature in accordance with this section, as well as any information resources necessary to permit access to the written electronic communications, are retained by the institution of higher education as necessary to comply with applicable law pertaining to audit and records retention requirements.

*§203.44. Acceptable Digital Signature Technology.*

(a) Digital Signatures must be Created by an Acceptable Technology. For a digital signature to be valid for use by an institution of higher education, it must be created by a technology that is accepted for use by the department pursuant to this section.

(b) Criteria for Determining if a Digital Signature Technology is Acceptable. An acceptable technology must be capable of creating signatures that conform to requirements set forth in §2054.060, Texas Government Code and the requirements of this section.

(c) List of Acceptable Technologies. The technology known as Public Key Cryptography is an acceptable technology for use by institutions of higher education provided that the digital signature is created consistent with the following:

(1) A public key-based digital signature must be unique to the person using it. Such a signature may be considered unique to the person using it if:

(A) the private key used to create the signature on the message is known only to the signer or, in the case of a role-based key, known only to the signer and an escrow agent acceptable to the signer and the institution of higher education; and

(B) the digital signature is created when a person runs a message through a one-way function, creating a message digest, then encrypting the resulting message digest using an asymmetric cryptosystem and the signer's private key; and

(C) although not all digitally signed communications will require the signer to obtain a certificate, the signer is capable of being issued a certificate to certify that he or she controls the key pair used to create the signature; and

(D) it is computationally infeasible to derive the private key from knowledge of the public key.

(2) A public-key based digital signature must be capable of independent verification. Such a signature may be considered capable of independent verification if:

(A) the relying party can verify the message was digitally signed by using the signer's public key to decrypt the message; and

(B) if a certificate is a required component of a transaction with a institution of higher education, the issuing PKI Service Provider, either through a certification practice statement, certificate policy, or through the content of the certificate itself, has identified what, if any, proof of identification it required of the signer prior to issuing the certificate.

(3) The private key of public-key based digital signature must remain under the sole control of the person using it, or in the case of a role-based key, that person and an escrow agent acceptable to that person and the institution of higher education. Whether a signature is accompanied by a certificate or not, the person who holds the key pair, or the subscriber identified in the certificate, must exercise reasonable care to retain control of the private key and prevent its disclosure to any person not authorized to create the subscriber's digital signature.

(4) The digital signature must be linked to the message of the document in such a way that it would be computationally infeasible to change the data in the message or the digital signature without invalidating the digital signature.

*§203.45. Acceptable PKI Service Providers.*

(a) The department shall maintain an "Approved List of PKI Service Providers" authorized to issue certificates for digitally signed communications sent to institutions of higher education or otherwise provide services in connection with the issuance of certificates. The list may include, but shall not necessarily be limited to, Certification Authorities, Certificate Manufacturers, Registrars, and/or other PKI Service Providers accepted and approved for use in connection with electronic messages transmitted to other state or federal governmental entities. A copy of such list may be obtained directly from the department, or may be obtained electronically via the World Wide Web at the following location: http://www.dir.state.tx.us/standards.

(b) Institutions of higher education shall only accept certificates from PKI Service Providers that appear on the "Approved List of PKI Service Providers."

(c) The department shall place a PKI Service Provider on the "Approved List of PKI Service Providers" after the PKI Service Provider provides the department with a copy of its current certification practice statement, if any, and a copy of an unqualified performance audit performed in accordance with standards set in the American Institute of Certified Public Accountants (AICPA) Statement on Auditing Standards No. 70 (S.A.S. 70) to ensure that the PKI Service Provider's practices and policies are consistent with the requirements of the PKI Service Provider's certification practice statement, if any, and the requirements of this section.

(d) In order to be placed on the "Approved List of PKI Service Providers" a PKI Service Provider that has been in operation for one year or less shall undergo a SAS 70 Type One audit--A Report of Policies and Procedures Placed in Operation, receiving an unqualified opinion.

(e) In order to be placed on the "Approved List of PKI Service Providers" a PKI Service Provider that has been in operation for longer than one year shall undergo a SAS 70 Type Two audit--A Report of Policies and Procedures Placed in Operation and Test of Operating Effectiveness, receiving an unqualified opinion.

(f) In lieu of the audit requirements listed above, a PKI Service Provider may be placed on the "Approved List of PKI Service Providers" upon providing the department with documentation issued by a person independent of the PKI Service Provider that is indicative of the security policies and procedures actually employed by the PKI Service Provider and that is acceptable to the department in its sole discretion. The department may request additional documentation relating to policies and practices employed by the PKI Service Provider indicating the trustworthiness of the technology employed and compliance with applicable department guidelines.

(g) To remain on the "Approved List of PKI Service Providers" a Certification Authority must provide proof of compliance with the audit requirements or other acceptable documentation to the department every two years after initially being placed on the list. In addition, a Certification Authority must provide a copy of any changes to its certification practice statement to the department promptly following the adoption by the Certification Authority of such changes.

(h) If the department is informed that a PKI Service Provider has received a qualified or otherwise unacceptable opinion following a required audit or if the department obtains credible information that the technology employed by the PKI Service Provider can no longer reasonably be relied upon, or if the PKI Service Provider's certification practice statement is substantially amended in a manner that causes the PKI Service Provider to become no longer in compliance with the audit requirements of this section, the PKI Service Provider may be removed from the "Approved List of PKI Service Providers" by the department. The effect of the removal of a PKI Service Provider from the "Approved List of PKI Service Providers" shall be to prohibit institutions of higher education from thereafter accepting digital signatures for which the PKI Service Provider issued a certificate or provided services in connection with such issuance for so long as the PKI Service Provider is removed from the list. The removal of a PKI Service Provider from the "Approved List of PKI Service Providers" shall not, in and of itself, invalidate a digital signature for which a PKI Service Provider issued the certificate prior to its removal from the list.

*§203.46. Signature Dynamics.*

(a) The technology known as "Signature Dynamics" is an acceptable technology for use by institutions of higher education, provided that the signature is created consistent with the following provisions:

(1) A digital signature produced by Signature Dynamics technology must be unique to the person using it. A signature digest produced by Signature Dynamics technology may be considered unique to the person using it if:

(A) the signature digest records the handwriting measurements of the person signing the message using signature dynamics technology; and

(B) the signature digest is cryptographically bound to the handwriting measurements; and

(C) after the signature digest has been bound to the handwriting measurements, it is computationally infeasible to separate the handwriting measurements and bind them to a different signature digest.

(2) A digital signature produced by Signature Dynamics technology must be capable of independent verification. A signature digest produced by Signature Dynamics technology may be considered capable of independent verification if:

(A) the acceptor of the digitally signed message obtains the handwriting measurements for purposes of comparison; and

(B) if signature verification is a required component of a transaction with an institution of higher education, the handwriting measurements can allow an expert handwriting and document examiner to assess the authenticity of a signature.

(3) A digital signature produced by Signature Dynamics technology must remain under the sole control of the person using it. A signature digest produced by Signature Dynamics technology may be considered to be under the sole control of the person using it if:

(A) the signature digest captures the handwriting measurements and cryptographically binds them to the message directed by the signer and to no other message; and

(B) the signature digest makes it computationally infeasible for the handwriting measurements to be bound to any other message.

(4) The signature digest produced by signature dynamics technology must be linked to the message in such a way that it would be computationally infeasible to change the data in the message or the digital signature without invalidating the digital signature.

(b) Provisions For Adding New Technologies to the List of Acceptable Technologies. Any person may, by providing a written request that includes a full explanation of a proposed technology which meets the requirements of this section, petition the department to review the technology. If the department determines that the technology is acceptable for use by institutions of higher education, the department shall draft rules to add the proposed technology to the list of acceptable technologies.

(c) The department has 90 days from the date of the request to review the petition and either accept or deny it. If the department does not approve the request within 90 days, the petitioner's request shall be considered denied. If the department denies the petition, it shall notify the petitioner in writing of the reasons for denial. The petitioner may appeal the department's denial of the petition at the next board meeting.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405426
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

# CHAPTER 204. INTERAGENCY CONTRACTS FOR INFORMATION RESOURCES TECHNOLOGIES

The Department of Information Resources (department) proposes to publish for public comment proposed new rules 1 T.A.C. Chapter 204, §§204.1 through 204.3, 204.10 through 204.12 and 204.30 through 204.32 in their entirety, as a portion of the rules affected by the implementation of Section 2054.121, Texas Government Code, Coordination with Institutions of Higher Education. The department and the Information Technology Council of Higher Education have identified former department rule §201.7, relating to interagency contracts for information resources technologies, as needing restructuring to clarify the instances in which the rule will apply to institutions of higher education. The department intends to publish repeal of 1 T.A.C. §201.7 by separate action. Because Subchapter B is applicable only to state agencies other than institutions of higher education, existing 1 T.A.C. Subsection (b)(3)(E) is no longer necessary and has been deleted from the new rule. Similarly, because Subchapter C is applicable only to institutions of higher education, existing 1 T.A.C. Subsection (b)(3)(F) is no longer necessary and has been deleted from the new rule. There have been no other substantive changes to the rule, other than the restructuring. The new rules are structured into three subchapters. Subchapter A, §§204.1 through 201.3 are definitions. Subchapter B, §§204.10 through 204.12 contain the rules that apply only to state agencies. Subchapter C, §§204.30 through 204.32, contain the rules that apply only to institutions of higher education. These rules are promulgated to implement §2054.121, Texas Government Code, which requires the repeal and readoption of rules in a manner that expressly applies to institutions of higher education, and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

The rules being proposed for publication underwent the analysis required by §2054.121, Texas Government Code, and were found to have no impact on the mission of higher education, student populations, and federal grant requirements. Alternate methods of implementation of this policy were considered to achieve the purpose of the rules and no alternates were found. The department did consider exempting institutions of higher education from all or part of the requirements of the rules. The department believes that application of the rules to institutions of higher education is in the public interest.

Mr. Dustin Lanier, Strategic Initiatives Division Director for the department, has determined that there will be no fiscal implications for state or local government if the proposed rules are adopted. The public will benefit by the adoption.

Mr. Lanier believes there will be no different effect on small businesses than there is on large businesses and that there is no additional anticipated economic cost to persons if the rules are adopted.

Comments on the proposed adoption of the rules may be submitted to Renée Mauzy, General Counsel, Department of Information Resources, via mail to P. O. Box 13564, Austin, Texas 78711, or electronically to renee.mauzy@dir.state.tx.us no later than 5:00 p.m. CST, within 30 days after publication.

## SUBCHAPTER A. DEFINITIONS

**1 TAC §§204.1 - 204.3**

The rules are proposed under §§2054.121 and 2054.052(a), Texas Government Code.

*§204.1. Key Terms And Technologies For Contracts For Information Resources Technologies.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Data processing--Information technology equipment and related services designed for the automated storage, manipulation, and retrieval of data by electronic or mechanical means, or both. The term includes:

(A) central processing units, front-end processing units, miniprocessors, microprocessors, and related peripheral equipment such as data storage devices, document scanners, data entry equipment, terminal controllers, data terminal equipment, computer-based word processing systems other than memory typewriters, and equipment and systems for computer networks;

(B) all related services, including feasibility studies, systems design, software development, and time-sharing services, whether provided by state employees or by others; and

(C) the programs and routines used to employ and control the capabilities of data processing hardware, including operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications, and computer networking programs.

(2) Department--The Department of Information Resources.

(3) Information resources--The procedures, equipment, and software that are designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information, and associated personnel including consultants and contractors.

(4) Information resources services--Services provided under contract to a state agency, or institution of higher education, by an individual or firm, or by a consultant or professional engineer under Texas Government Code, Chapter 2254, Subchapter A, Professional Services Procurement Act, and Texas Government Code, Chapter 2254, Subchapter B, Consulting Services, which includes: studying existing information resources of a state agency or institution of higher education; advising on necessary changes or additions to the information resources environment; performing information resources feasibility studies; information resources training; or recommending, managing, converting, designing, procuring, developing, documenting, programming, testing, implementing, or installing new information resources, including systems development methodologies and disaster recovery capabilities.

(5) Information resources technologies--Data processing and telecommunications hardware, software, services, supplies, personnel, facility resources, maintenance, and training.

*§204.2. Institution Of Higher Education.*

A university system or institution of higher education as defined by §61.003, Education Code.

*§204.3. State Agency.*

A department, commission, board, office, council, authority, or other agency in the executive or judicial branch of state government, other than an institution of higher education, that is created by the constitution or a statute of this state. The rules are proposed under §§2054.121 and 2054.052(a), Texas Government Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405439
Renee Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

## SUBCHAPTER B. STATE AGENCY INTERAGENCY CONTRACTS

### 1 TAC §§204.10 - 204.12

The rules are proposed under §§2054.121 and 2054.052(a), Texas Government Code.

*§204.10. Public Solicitation Required.*

Public solicitation is required under the following conditions:

(1) Except as otherwise provided in 1 T.A.C. §204.11, each state agency that proposes to receive information resources technologies under a contract from another state agency or institution of higher education must first solicit bids or proposals for the procurement of such technologies by giving public notice of a request for proposals or a request for bids.

(2) Each state agency that solicits bids or proposals from the public for the procurement of information resources technologies must do so in accordance with applicable rules adopted by the Texas Building and Procurement Commission pertaining to competitive bidding or competitive sealed proposals.

(3) If a state agency receives a bid or a proposal from a private vendor in response to a solicitation issued in accordance with this subsection, it must review the bid or proposal and compare it with the best proposed interagency contract available to the state agency for such information resources technologies. Specifically, the state agency must determine whether the bid or proposal:

(A) is for the same or substantially the same technologies as those available under the proposed interagency contract;

(B) would allow the state agency to accomplish the application or project at an acceptable level of quality;

(C) would allow the state agency to accomplish the application or project in an acceptable period of time; and

(D) would have a total cost to the state that is less than the total cost to the state of the best proposed interagency contract available to the state agency.

(4) If a state agency receives a bid or proposal from a private vendor that satisfies all of the criteria listed under paragraph (3) of this subsection, it may not enter into an interagency contract for the receipt of such information resources technologies.

*§204.11. Exceptions To Public Solicitation Requirement.*

A state agency may procure information resources technologies from another state agency or institution of higher education without first giving public notice of a request for proposals or an invitation for bids in the following cases:

(1) the total dollar amount of the proposed interagency contract does not exceed $50,000;

(2) the state agency has requested and received a waiver from the department in accordance with 1 T.A.C. §204.12, and the total dollar amount of the proposed interagency contract does not exceed the amount specified by the department in the waiver; or

(3) the total dollar amount of the proposed interagency contract does not exceed $1 million and one or more of the following circumstances are present:

(A) the primary purpose of the proposed interagency contract is the direct accomplishment of a specific legislative mandate;

(B) the same or substantially the same information resources technologies are available from two or more private vendors under the catalogue purchasing procedure of the Texas Building and Procurement Commission at a cost that exceeds the cost of the proposed interagency contract;

(C) the procurement constitutes an emergency purchase under applicable rules of the Texas Building and Procurement Commission;

(D) the procurement constitutes a proprietary purchase under applicable rules of the Texas Building and Procurement Commission; or

(E) both parties to the proposed interagency contract are health and human service agencies, as that term is defined in Texas Government Code, §531.001(4).

*§204.12. Waivers.*

(a) A state agency, other than an institution of higher education, may submit a written request to the department for a waiver of the public solicitation requirement described in subsection (a) of this section. The request must include the following:

(1) a description of the proposed interagency contract, including the total dollar amount of the contract;

(2) a description of the circumstances that would, in the opinion of the requesting state agency, justify an exception to the public solicitation requirement;

(3) a certification that a procurement under the proposed interagency contract would, in the opinion of the requesting state agency, be more cost effective than a procurement based on a public solicitation of bids or proposals;

(4) detailed cost information to support the certification of cost effectiveness; and

(5) any other information requested by the department.

(b) Upon receipt of a request for a waiver, the department shall promptly review the request to determine whether it contains the required information and the required certification of cost effectiveness. If the request does contain such information and certification, the department shall issue a written determination that a procurement under the proposed contract is presumed by the department to be more cost effective than a procurement based on a public solicitation of bids or proposals, and shall issue a written waiver of the public solicitation requirement for the proposed contract. The written waiver shall specify the maximum dollar amount that may be expended in connection with the proposed contract without having to comply with the public solicitation requirement.

(c) If the department has not issued a written denial of the waiver request within 30 calendar days following the date of its receipt of the request, the request for a waiver is deemed approved in an amount equal to the total dollar amount of the proposed interagency contract.

(d) A decision by the department regarding the issuance of a waiver or a determination of cost effectiveness is final and may not be

appealed. The rules are proposed under §§2054.121 and 2054.052(a), Texas Government Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405440
Renee Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

## SUBCHAPTER C. INSTITUTION OF HIGHER EDUCATION INTERAGENCY CONTRACTS

**1 TAC §§204.30 - 204.32**

The rules are proposed under §§2054.121 and 2054.052(a), Texas Government Code.

*§204.30. Public Solicitation Required.*

Public solicitation is required under the following conditions:

(1) Except as otherwise provided in 1 T.A.C. §204.31, each institution of higher education that proposes to receive information resources technologies under a contract from another state agency or institution of higher education must first solicit bids or proposals for the procurement of such technologies by giving public notice of a request for proposals or a request for bids.

(2) Each institution of higher education that solicits bids or proposals from the public for the procurement of information resources technologies must do so in accordance with applicable rules adopted by the Texas Building and Procurement Commission pertaining to competitive bidding or competitive sealed proposals.

(3) If an institution of higher education receives a bid or a proposal from a private vendor in response to a solicitation issued in accordance with this subsection, it must review the bid or proposal and compare it with the best proposed interagency contract available to the institution of higher education for such information resources technologies. Specifically, the institution of higher education must determine whether the bid or proposal:

(A) is for the same or substantially the same technologies as those available under the proposed interagency contract;

(B) would allow the institution of higher education to accomplish the application or project at an acceptable level of quality;

(C) would allow the institution of higher education to accomplish the application or project in an acceptable period of time; and

(D) would have a total cost to the state that is less than the total cost to the state of the best proposed interagency contract available to the institution of higher education.

(4) If a institution of higher education receives a bid or proposal from a private vendor that satisfies all of the criteria listed under paragraph (3) of this subsection, it may not enter into an interagency contract for the receipt of such information resources technologies.

*§204.31. Exceptions To Public Solicitation Requirement.*

An institution of higher education may procure information resources technologies from another state agency or institution of higher education without first giving public notice of a request for proposals or an invitation for bids in the following cases:

(1) the total dollar amount of the proposed interagency contract does not exceed $50,000;

(2) the institution of higher education has requested and received a waiver from the department in accordance with 1 T.A.C. §204.32, and the total dollar amount of the proposed interagency contract does not exceed the amount specified by the department in the waiver; or

(3) the total dollar amount of the proposed interagency contract does not exceed $1 million and one or more of the following circumstances are present:

(A) the primary purpose of the proposed interagency contract is the direct accomplishment of a specific legislative mandate;

(B) the same or substantially the same information resources technologies are available from two or more private vendors under the catalogue purchasing procedure of the Texas Building and Procurement Commission at a cost that exceeds the cost of the proposed interagency contract;

(C) the procurement constitutes an emergency purchase under applicable rules of the Texas Building and Procurement Commission;

(D) the procurement constitutes a proprietary purchase under applicable rules of the Texas Building and Procurement Commission; or

(E) both parties to the proposed interagency contract are institutions of higher education with a common governing board, as those terms are defined in the Education Code, §61.003.

*§204.32. Waivers.*

(a) An institution of higher education may submit a written request to the department for a waiver of the public solicitation requirement described in subsection (a) of this section. The written request must include the following:

(1) a description of the proposed interagency contract, including the total dollar amount of the contract;

(2) a description of the circumstances that would, in the opinion of the requesting institution of higher education, justify an exception to the public solicitation requirement;

(3) a certification that a procurement under the proposed interagency contract would, in the opinion of the requesting institution of higher education, be more cost effective than a procurement based on a public solicitation of bids or proposals;

(4) detailed cost information to support the certification of cost effectiveness; and

(5) any other information requested by the department.

(b) Upon receipt of a request for a waiver, the department shall promptly review the request to determine whether it contains the required information and the required certification of cost effectiveness. If the request does contain such information and certification, the department shall issue a written determination that a procurement under the proposed contract is presumed by the department to be more cost effective than a procurement based on a public solicitation of bids or proposals, and shall issue a written waiver of the public solicitation requirement for the proposed contract. The written waiver shall specify the maximum dollar amount that may be expended in connection with

the proposed contract without having to comply with the public solicitation requirement.

(c) If the department has not issued a written denial of the waiver request within 30 calendar days following the date of its receipt of the request, the request for a waiver is deemed approved in an amount equal to the total dollar amount of the proposed interagency contract.

(d) A decision by the department regarding the issuance of a waiver or a determination of cost effectiveness is final and may not be appealed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405441
Renee Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

## CHAPTER 206. STATE WEB SITES

**1 TAC §§206.1 - 206.5**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Information Resources or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Department of Information Resources (department) proposes the repeal of 1 TAC Chapter 206, §§206.1 - 206.5, concerning State Web Sites. By separate action, the department will publish proposed new state web site rules that identify the web site standards applicable to state agencies other than institutions of higher education and the standards applicable to institutions of higher education.

Dustin Lanier, Strategic Initiatives Division Director for the department, has determined that there will be no fiscal implications for state or local government if 1 TAC Chapter 206 is repealed. The public will benefit from the clarification resulting from repealing these rules and proposing new web site rules that distinguish between the standards applicable to state agencies other than institutions of higher education and the standards applicable to institutions of higher education.

Mr. Lanier believes there will be no different effect on small businesses than there is on large businesses since the rules do not affect businesses. He also believes there is no additional anticipated economic cost to persons if the rules are repealed.

Comments on the proposed repeal of 1 TAC Chapter 206 may be submitted to Renée Mauzy, General Counsel, Department of Information Resources, P.O. Box 13564, Austin, Texas 78711, or electronically to renee.mauzy@dir.state.tx.us no later than 5:00 p.m. CT, within 30 days of publication.

The repeal is proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

Texas Government Code, Chapter 2054 and §2001.039(c) are affected by the proposed repeal.

*§206.1. Definitions.*
*§206.2. Accessibility and Usability of State Web Sites.*
*§206.3. Privacy and Security of State Web Sites.*
*§206.4. State Web Site Link and Privacy Policy.*
*§206.5. Linking and Indexing State Web Sites.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 26, 2004.

TRD-200405395
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

## CHAPTER 206. STATE WEB SITES

The Department of Information Resources (department) proposes to publish for public comment proposed new 1 TAC Chapter 206, §§206.1 - 206.3, 206.50 - 206.55 and 206.70 - 206.75 in their entirety, as a portion of the rules affected by the implementation of §2054.121, Texas Government Code, Coordination with Institutions of Higher Education. The department and the Information Technology Council of Higher Education have identified former department rule Chapter 206 as needing restructuring to clarify the instances in which the rules will apply to institutions of higher education. The department intends to publish repeal of 1 TAC Chapter 206 by separate action. In new Chapter 206, §206.55(a) (for state agencies) and §206.75(a) (for institutions of higher education) adopt the Texas State Library and Archive Commission standards for use of meta tags, §206.55(b)(1)(B) (for state agencies), and §206.75(b)(1)(B) (for institutions of higher education) require a link to the Texas Homeland Security Web site, and §206.1(22) updates the standards for transaction risk assessments to those described in Part 2: Risks Pertaining to Electronic Transactions and Signed Records in the "The Guidelines for the Management of Electronic Transactions and Signed Records" available at http://www.dir.state.tx.us/standards/UETA_Guideline.htm. Sections 206.53(a) (for state agencies) and 206.73(a) (for institutions of higher education) have been modified to require a link to the privacy and security policy from the home page or from a "site policies" page. This change was made to potentially reduce the number of links required. Other changes to this section of the rules clarify language and correct grammar. Sections 206.52 (for state agencies) and 206.72 (for institutions of higher education) add a recommendation that state agencies and institutions of higher education provide translations of site content into the primary language(s) of people who use the Web site. This recommendation is made to facilitate usability of state Web sites by people with limited English proficiency. Sections 206.54(3)(A) (for state agencies) and 206.74(3)(A) (for institutions of higher education) have been modified from the existing rule to discourage posting information on state Web sites that might assist terrorists or other malevolent actors in exploiting, creating or enhancing information technology vulnerabilities.

This change is proposed to create awareness at state agencies and institutions of higher education that consideration should be given, before posting information on the Web site, as to whether the information might provide an advantage to terrorists or other bad actors. There have been no other substantive changes to the rules, other than the restructuring.

The new rules are structured into three subchapters. Subchapter A, §§206.1 - 206.3, are definitions. Subchapter B, §§206.50 - 206.55, contains the rules that apply only to state agencies that are not institutions of higher education. Subchapter C, §§206.70 - 206.75, contains the rules that apply only to institutions of higher education. These rules are promulgated to implement §2054.121, Texas Government Code, which requires the repeal and readoption of rules in a manner that expressly applies to institutions of higher education, and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

The rules being proposed for publication underwent the analysis required by §2054.121, Texas Government Code, and were found to have no impact on the mission of higher education, student populations, and federal grant requirements. Alternate methods of implementation of this policy were considered to achieve the purpose of the rules and no alternates were found. The department did consider exempting institutions of higher education from all or part of the requirements of the rules but found that the public interest is served by the application of the rules to institutions of higher education.

Mr. Dustin Lanier, Strategic Initiatives Division Director for the department, has determined that there will be no fiscal implications for state or local government if the proposed rules are adopted. The public will benefit by the adoption.

Mr. Lanier believes there will be no different effect on small businesses than there is on large businesses since the rules are inapplicable to businesses, and that there is no additional anticipated economic cost to persons if the rules are adopted.

Comments on the proposed rules may be submitted to Renée Mauzy, General Counsel, Department of Information Resources, via mail to P.O. Box 13564, Austin, Texas 78711, or electronically to renee.mauzy@dir.state.tx.us no later than 5:00 p.m. CT, within 30 days after publication.

## SUBCHAPTER A. DEFINITIONS

**1 TAC §§206.1 - 206.3**

The rules are proposed under §2054.121 and §2054.052(a), Texas Government Code.

*§206.1. Applicable Terms And Technologies For State Web Sites.*

The following words and terms, when used with this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accessible--A Web page that can be used in a variety of ways and that does not depend on a single sense or ability.

(2) Accessibility Policy--An agency's policies to ensure that access to its information, services, and programs are accessible, usable, understandable and navigable.

(3) Contact information--a list of key personnel and/or position or program contacts, including public contact telephone numbers, general e-mail address, and other information deemed necessary by the agency or institution of higher education for facilitating public access.

(4) Compact With Texans--customer service standards and performance measures required of state agencies, including institutions of higher education, by §§2113.006 and 2114.006, Government Code.

(5) Generally accessible Internet site--A state Web site that provides for graceful transformation and makes content understandable and navigable. Additional information and resources are included in the accessibility-usability guidelines available at http://www.dir.state.tx.us/standards/srrpub11-accessibility.htm.

(6) Home page--The initial page or entry point to a state Web site.

(7) HTML--HyperText Markup Language.

(8) Internet--the network of interconnected networks employing standards published by the Internet Engineering Task Force (IETF).

(9) Key public entry point--A Web page that a state agency or institution of higher education has specifically designed for members of the general public to access official information (e.g., the governing or authoritative documents) from the agency or institution of higher education.

(10) Link Policy--State Web Site Link and Privacy Policy that identify the terms under which a person may use, copy information from, or link to a generally accessible Internet site of a state agency or institution of higher education. The requirements for these policies for state agencies other than institutions of higher education are set forth in subchapter B, §206.54 and are available at http://www.dir.state.tx.us/standards/link_policy.htm. The requirements for these policies for institutions of higher education are set forth in subchapter C, §206.74 and are available at http://www.dir.state.tx.us/standards/link_policy2.htm.

(11) Logging software and cookies--Particular methods employed for the purpose of tracking visitors to Web sites. The information collected for analysis can include where the request came from, time, pages visited, and identifiable information about the visitor.

(12) Open Records/Public Information Act notice-- The policies and practices of the state agency or institution of higher education for providing public access to governmental information and decisions.

(13) Privacy and Security Policy--a statement about what information is collected by the Web site of a state agency or institution of higher education and how the information will be used and protected, under what conditions the information may be shared or released to another party, and the procedure under which a member of the public is entitled to receive and/or correct information that a state agency, including an institution of higher education, maintains about the individual.

(14) Site Policies page -- a Web page containing the policies of the state agency or institution of higher education, or a link to each policy.

(15) State Web site--a state agency or institution of higher education owned, -operated by/or for, or -funded Web site connected to the Internet, including the home page and any key public entry points.

(16) SSN--Social Security Number.

(17) SSL--Secure Sockets Layer. The Internet security standard for point-to-point, encrypted connections between Web servers and client browsers.

(18) Statewide Search--a link to the TRAIL Web site.

(19) Texas Homeland Security -- the Governor's Office Web site with information about current homeland security threat levels in Texas, available at http://www.texashomelandsecurity.com.

(20) TRAIL--Texas Records and Information Locator or its successor. Additional information is available at http://www.tsl.state.tx.us.

(21) Transaction payment information--bank account and routing number, credit, debit, charge, or other forms of card-based, access device number, and/or Internet based, payment systems. Access device means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone, or in conjunction with another access device, may be used to:

(A) obtain money, goods, services, or another thing of value; or

(B) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(22) Transaction Risk Assessment--An evaluation of the security and privacy required for an interactive Web session providing public access to government information and services. Additional information and guidelines are included in PART 2: Risks Pertaining to Electronic Transactions and Signed Records in "The Guidelines for the Management of Electronic Transactions and Signed Records" available at http://www.dir.state.tx.us/standards/UETA_Guideline.htm.

(23) Usability--Web design criteria that focuses on user performance, ease of navigation, is understandable and is visually appealing.

(24) W3C--World Wide Web Consortium. Additional information and copies of the current standards and recommendations are available at http://www.w3.org.

(25) Web bug--code used to track and/or report information about a visitor to a Web page, or used in an e-mail message. Also known as a Web Beacon or Clear GIF.

(26) Web page--A document that a state agency or institution of higher education has specifically designed for members of the public to access the official information (e.g., the governing or authoritative documents) via the Internet.

*§206.2. Institution Of Higher Education.*

A university system or institution of higher education as defined by §61.003, Education Code.

*§206.3. State Agency.*

A department, commission, board, office, council, authority, or other agency, other than an institution of higher education, in the executive or judicial branch of state government, that is created by the constitution or a statute of this state.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405443
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

## SUBCHAPTER B. STATE AGENCY WEB SITES

**1 TAC §§206.50 - 206.55**

The rules are proposed under §2054.121 and §2054.052(a), Texas Government Code.

*§206.50. Accessibility And Usability Of State Web Sites.*

Each state agency shall develop and publish an accessibility policy for its Web site and/or Web pages that addresses the following:

(1) At least one copy of a state agency Web page, whether static or dynamic, must be in an accessible format.

(2) Each state Web site shall meet the definition of a generally accessible Internet site, and ensure that Web pages transform gracefully and remain accessible despite any physical, sensory, or environmental constraints or technological barriers.

(3) Each state Web site shall avoid vendor specific "non-standard" extensions and comply with applicable Internet and W3C standards. For guidance regarding "non-standard" extensions and applicable standards, state agencies shall refer to the department's guidelines available at http://www.dir.state.tx.us/standards/srrpub11.htm.

(4) The policy should cover testing and validation of Web pages.

(5) Each state Web sites must be designed with consideration for the types of Internet connections available to the citizens of Texas, and undergo accessibility and usability testing.

*§206.51. Accessibility Policy.*

The home page of a state Web site, and key public entry points, shall include an "Accessibility" link to, or a "Site Policies" link to a Web page that contains the state agency's accessibility policy, site validation (e.g., W3C), contact information for the agency's accessibility coordinator, and a link to the Governor's Committee on People with Disabilities Web site.

*§206.52. Translation Of Web Site Content.*

To facilitate the usability of state Web sites by people with limited English proficiency, in addition to English language content, agencies should consider providing the content of their Web sites in the primary language or languages used by the people using the Web site. The translation of Web site content into languages in addition to English can be achieved at less cost if the agency translates Web site content into additional languages at the time other changes are made to the Web site. The U.S. Department of Justice issued "Enforcement of Title VI of the Civil Rights Act of 1964-National Origin Discrimination Against Persons with Limited English Proficiency," a guidance document that sets forth compliance standards to ensure that programs and activities provided in English are accessible to individuals with limited English proficiency. These guidelines may be helpful to an agency in determining the parts of its Web site content that should be available in languages in addition to English. The guidelines recommend that agencies consider:

(1) the number or proportion of people in the eligible service population with limited English proficiency;

(2) the frequency with which those individuals contact the program;

(3) the importance of the services provided; and

(4) the resources available to the recipient agency and costs.

*§206.53. Privacy And Security Of State Web Sites.*

(a) Each state agency shall publish a privacy and security policy for its Web site and post a link to the policy from its home page, or a "Site Policies" page. The privacy and security policy shall address the following:

(1) Notice: This section must disclose the state agency's information practices before the site collects personal information from the public, including the use of cookies, and/or Web bugs as well as information collected by other technologies and processes, and information collected via e-mail and Web-based forms.

(2) Choice: This section must disclose whether and how personal information collected from the public may be used for purposes beyond those for which the information was provided.

(3) Access: This section must address the procedure under which an individual may obtain information about himself or herself from the state agency and/or have the state agency correct information about the individual.

(4) Security: This section must describe the procedures that ensure that information collected from individuals is accurate and secure from unauthorized use.

(b) Web pages designed for children must comply with all applicable federal and state laws intended to protect minors.

(c) Prior to providing access to information or services on a state Web site that requires user identification, each state agency shall conduct a transaction risk assessment, and implement appropriate privacy and security safeguards. At a minimum, state Web sites that require an individual to enter the following information in a Web based electronic form shall use an SSL session or equivalent technology to encrypt the data:

(1) The individual's name and other personal information, such as an SSN;

(2) Transaction payment information;

(3) An individual's access identification code and password;

(4) An individual's e-mail address.

(d) Any Web based form that requests information from the public shall have a link to the associated privacy and security policy.

*§206.54. State Web Site Link And Privacy Policy.*

The following outlines the policies for linking to, the use of, or copying information from state agency Web sites and protecting the personal information of members of the public who access state agency information through a state agency Web site. It also requires that state agencies link to the policy.

(1) Requirements Applicable to Those Linking to State Agency Web Sites.

(A) Linking to State Agency Web Sites. Organizations and individuals (the site owner) are encouraged to link to state agency information. Advance permission is not required before linking. Links should be made using the appropriate base URL of www.agency-identifier.state.tx.us or such other URL as the agency may use. Because state agencies may change subpages at any time without notice, the site owner should routinely verify links to state agency subpages.

(B) What Site Owners May Not Do in Linking to State Agency Web Sites. Site owners may not capture state agency pages within the site owner's frames, present state agency Web site content as that of the site owner, otherwise misrepresent the content of the state agency pages or misinform users about the origin or ownership of the content of the state agency Web site. Any link to a state agency site should be a full forward link that passes the client browser to the state agency site unencumbered. The BACK button should return the visitor to the site owner's site if the visitor wishes to back out. Although the content of state agency Web sites is available to the public, certain information on some state agency Web sites may be trademarked, service marked, or otherwise protected as the state agency's intellectual property, and all agency content is protected by federal copyright laws. Use of protected intellectual property must be in accordance with federal and state law and must reflect the copyright, trademark, service mark or other intellectual property ownership of the state agency. Site owners should not link to individual state agency graphics or tables within state agency pages, especially in an effort to place the downloading burden on the state agency servers. Such an action may be considered a misuse of state resources. Site owners should contact the appropriate state agency to request permission to use a copy of the state agency's graphics within the site owner's pages.

(C) Accessibility. Owners of sites linked to state agency pages shall use reasonable efforts to ensure that persons with disabilities may access these sites.

(D) Copying and Use of Information by Web Site Owners Linking to State Agency Sites. The information posted on a state agency Web site may be copied so long as it is presented in a non-misleading way and does not imply that either the site owner or the information, as it is presented on the site owner's Web site, is endorsed by the State. Use of the information must identify the state agency that is the source of the information, its Web address, the date the information was copied from the state agency's Web site by the site owner and must be accompanied by a statement that neither the site owner nor the information, as it is presented on the site owner's Web site, is endorsed by the State or any state agency. A state agency may not charge a fee to access, use or reproduce information on its Web site or to link to information on its Web site, unless specifically authorized to do so by the Texas Legislature. To protect the intellectual property of state agencies, copied information must reflect the copyright, trademark, service mark or other intellectual property rights of the state agency whose protected information is being used by the site owner.

(E) Links From a State Agency Web Site. A state agency that only provides links to other state agencies and institutions of higher education will post a link to this State Web Site Link and Privacy Policy. A state agency that provides links to private Web sites shall publish a linking policy that includes its standards and criteria for linking to the private Web site. State agencies are strongly encouraged to publish a disclaimer policy that specifically disclaims liability and responsibility for private Web site content. State agencies that link to private Web sites will post a link to this State Web Site Link and Privacy Policy from the Web page that identifies their specific policies.

(2) Protection of the Privacy Rights of Individuals by Non-Judiciary State Governmental Bodies.

(A) Under Texas law, Chapter 559, Texas Government Code, unless a state governmental body, other than a state governmental body that is part of the judiciary, is allowed to withhold requested information from an individual pursuant to Chapter 552, Texas Government Code (the Texas Public Information Act), the individual is entitled to be informed about information collected by the state governmental body about that individual.

(B) Each non-judiciary state governmental body that collects information about an individual by means of a form that the individual completes and files with the state governmental body in a paper format or in an electronic format on an Internet site shall

prominently state, on the paper form and prominently post on the state governmental body's Internet site in connection with the electronic form, that:

*(i)* with few exceptions, the individual is entitled on request to be informed about the information that the state governmental body collects about the individual;

*(ii)* the individual is entitled to receive and review the information; and

*(iii)* the individual is entitled to have the state governmental body correct incorrect information about the individual.

(C) Each non-judiciary state governmental body that collects information about an individual by means of an Internet site or that collects information about the computer network location or identity of a user of the Internet site shall prominently post on the state governmental body's Internet site:

*(i)* what information is being collected through the site about the individual; and

*(ii)* what information is being collected through the site about the computer network location or identity of a user of the state governmental body's Internet site, including what information is being collected by means that are not obvious.

(D) Each non-judiciary state governmental body must establish a reasonable procedure under which individuals may have incorrect information about them that is held by the state governmental body corrected. The correction procedure may not unduly burden the individual seeking to have information corrected.

(E) Each non-judiciary state governmental body shall identify its information collection practices and post that information in its Internet site privacy and security policy. The e-mail addresses of members of the public that are provided to non-judiciary state governmental bodies for electronic communication with state governmental bodies are confidential and may not be disclosed by state governmental bodies unless the affected member of the public affirmatively consents to the disclosure of his or her e-mail address.

(3) Requirements Applicable to State Agencies.

(A) With the exception of confidential information, information protected by laws designed to protect an individual's privacy interests, information that might assist terrorists or other malevolent actors in exploiting, creating or enhancing vulnerabilities and information not subject to disclosure under the Texas Public Information Act, state agencies are encouraged to post information on the Internet in an accessible format. Information about the design and posting of information on state Web sites is available at http://www.dir.state.tx.us/standards/srrpub11.htm.

(B) State agencies may not sell or release the e-mail addresses of members of the public that have been provided to communicate electronically with a government body without the affirmative consent of the affected member of the public.

*§206.55. Linking And Indexing State Web Sites.*

(a) All new or changed HTML documents on a state agency Web site that meet the criteria of a "state publication" as defined by the Texas State Library and Archives Commission shall include the meta tags required by the Texas State Library and Archives Commission (13 TAC §3.9).

(b) The home page of a state Web site shall incorporate TRAIL metadata and shall:

(1) Provide links to the following State of Texas resources:

(A) Texas home page;

(B) Texas Homeland Security Web site;

(C) Link Policy, or the Site Policies page;

(D) Statewide Search Web site.

(2) Provide individual links to the following information, or to the Site Policies page with links to the following:

(A) Privacy and Security policy;

(B) Accessibility policy;

(C) Contact information;

(D) Description of the Open Records/Public Information Act policy/procedures of the state agency;

(E) Compact With Texans.

(c) All key public entry points shall provide a link to the following:

(1) Agency home page;

(2) Provide individual links to the following, or a link to the Site Policies page with links to the following:

(3) Contact information;

(4) Accessibility policy;

(5) Privacy and Security policy.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405444
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

## SUBCHAPTER C. INSTITUTION OF HIGHER EDUCATION WEB SITES

**1 TAC §§206.70 - 206.75**

The rules are proposed under §2054.121 and §2054.052(a), Texas Government Code.

*§206.70. Accessibility And Usability Of Institution Of Higher Education Web Sites.*

Each institution of higher education shall develop and publish an accessibility policy for its Web site and/or Web pages that addresses the following:

(1) At least one copy of the Web page, whether static or dynamic, must be in an accessible format.

(2) Each Web site shall meet the definition of a generally accessible Internet site, and ensure that Web pages transform gracefully and remain accessible despite any physical, sensory, or environmental constraints or technological barriers.

(3) Each Web site shall avoid vendor specific "non-standard" extensions and comply with applicable Internet and W3C standards. For guidance regarding "non-standard" extensions and applicable standards, institutions of higher education shall refer to the department's guidelines available at http://www.dir.state.tx.us/standards/srrpub11.htm. The policy should cover testing and validation of Web pages.

(4) Each Web site shall be designed with consideration for the types of Internet connections available to the citizens of Texas and undergo accessibility and usability testing.

*§206.71. Accessibility Policy.*

The home page of an institution of higher education Web site, and key public entry points, shall include an "Accessibility" link to, or a "Site Policies" link to a Web page that contains the institution of higher education accessibility policy, site validation (e.g., W3C), contact information for the accessibility coordinator, and a link to the Governor's Committee on People with Disabilities Web site.

*§206.72. Translation Of Web Site Content.*

To facilitate the usability of institutions of higher education Web sites by people with limited English proficiency, in addition to English language content, institutions of higher education should consider providing the content of their Web sites in the primary language or languages used by the people using the Web site. The translation of Web site content into languages in addition to English can be achieved at less cost if the institution of higher education translates Web site content into additional languages at the time other changes are made to the Web site. The U.S. Department of Justice issued "Enforcement of Title VI of the Civil Rights Act of 1964-National Origin Discrimination Against Persons with Limited English Proficiency," a guidance document that sets forth compliance standards to ensure that programs and activities provided in English are accessible to individuals with limited English proficiency. These guidelines may be helpful in determining the parts of Web site content that should be available in languages in addition to English. The guidelines recommend that consideration be given to:

(1) the number or proportion of people in the eligible service population with limited English proficiency;

(2) the frequency with which those individuals contact the program;

(3) the importance of the services provided; and

(4) the resources available to the recipient institution of higher education and costs.

*§206.73. Privacy And Security Of State Web Sites.*

(a) Each institution of higher education shall publish a privacy and security policy for its Web site, and post a link to the policy from its home page, or Site Policies page. The privacy and security policy shall address the following:

(1) Notice: This section must disclose the institution of higher education's information practices before the site collects personal information from the public, including the use of, cookies, and/or Web bugs as well as information collected by other technologies and processes, and information collected via e-mail and Web-based forms.

(2) Choice: This section must disclose whether and how personal information collected from the public may be used for purposes beyond those for which the information was provided.

(3) Access: This section must address the procedure under which an individual may obtain information about himself or herself from the institution of higher education and/or have the institution of higher education correct information about the individual.

(4) Security: This section must describe the procedures that ensure that information collected from individuals is accurate and secure from unauthorized use.

(b) Web pages designed for children must comply with all applicable federal and state laws intended to protect minors.

(c) Prior to providing access to information or services on a state Web site that require user identification, each institution of higher education shall conduct a transaction risk assessment and implement appropriate privacy and security safeguards. At a minimum, Web sites that require an individual to enter the following information in a Web based electronic form shall use an SSL session or equivalent technology to encrypt the data:

(1) The individual's name and other personal information, such as an SSN;

(2) Transaction payment information;

(3) An individual's access identification code and password;

(4) An individual's e-mail address.

(d) Any Web based form that requests information from the public shall have a link to the associated privacy and security policy.

*§206.74. State Web Site Link And Privacy Policy.*

The following outlines the policies for linking to, the use of, or copying information from institution of higher education Web sites and protecting the personal information of members of the public who access information through an institution of higher education Web site. It also requires that institutions of higher education link to the policy.

(1) Requirements Applicable to Those Linking to Institution of Higher Education Web Sites.

(A) Linking to Institution of Higher Education Web Sites. Organizations and individuals (the site owner) are encouraged to link to institution of higher education information. Advance permission is not required before linking. Links should be made using the appropriate base URL of www.institution of higher education-identifier.edu or state.tx.us or such other URL as the institution of higher education may use. Because institutions of higher education may change subpages at any time without notice, the site owner should routinely verify links to institution of higher education subpages.

(B) What Site Owners May Not Do in Linking to Institution of Higher Education Web Sites. Site owners may not capture institution of higher education pages within the site owner's frames, present institution of higher education Web site content as that of the site owner, otherwise misrepresent the content of the institution of higher education pages or misinform users about the origin or ownership of the content of the institution of higher education Web site. Any link to a institution of higher education site should be a full forward link that passes the client browser to the institution of higher education site unencumbered. The BACK button should return the visitor to the site owner's site if the visitor wishes to back out. Although the content of institution of higher education Web sites is available to the public, certain information on some institution of higher education Web sites may be trademarked, service marked, or otherwise protected intellectual property of the institution of higher education. All content is protected by federal copyright laws. Use of protected intellectual property must be in accordance with federal and state law and must reflect the copyright, trademark, service mark or other intellectual property ownership of the institution of higher education. Site owners should not link to individual institution of higher education graphics or tables within institution of higher education pages, especially in an effort to place the downloading burden on the institution of higher

education servers. Such an action may be considered a misuse of state resources. Site owners should contact the appropriate institution of higher education to request permission to use a copy of the institution of higher education's graphics within the site owner's pages.

(C) Accessibility. Owners of sites linked to institution of higher education pages shall use reasonable efforts to ensure that persons with disabilities may access these sites.

(D) Copying and Use of Information by Web Site Owners Linking to Institution of Higher Education Web Sites. Much of the information posted on institution of higher education Web sites is owned by the individual who posts it rather than by the institution of higher education, pursuant to the institution of higher education's intellectual property policies. Whether information is owned by the institution of higher education or by an individual, permission should be obtained from the content owner for any use beyond fair use. Such materials may only be used in accordance with any limitations requested by the owner.

(E) Links from an Institution of Higher Education Web Site. An institution of higher education that only provides links to other institutions of higher education and state agencies will post a link to this State Web Site Link and Privacy Policy. An institution of higher education that provides links to private Web sites shall publish a linking policy that includes its standards and criteria for linking to the private Web site. Institutions of higher education are strongly encouraged to publish a disclaimer policy that specifically disclaims liability and responsibility for private Web site content. Institutions of higher education that link to private Web sites will post a link to this State Web Site Link and Privacy Policy from the Web page that identifies their specific policies.

(2) Protection of the Privacy Rights of Individuals by Non-Judiciary State Governmental Bodies.

(A) Under Texas law, Chapter 559, Texas Government Code, unless a state governmental body, other than a state governmental body that is part of the judiciary, is allowed to withhold requested information from an individual pursuant to Chapter 552, Texas Government Code (the Texas Public Information Act), the individual is entitled to be informed about information collected by the state governmental body about that individual.

(B) Each institution of higher education that collects information about an individual by means of a form that the individual completes and files with the institution of higher education in a paper format or in an electronic format on an Internet site shall prominently state, on the paper form and prominently post on its Internet site in connection with the electronic form, that:

*(i)* with few exceptions, the individual is entitled on request to be informed about the information that collected about the individual;

*(ii)* the individual is entitled to receive and review the information; and

*(iii)* the individual is entitled to have the institution of higher education correct incorrect information about the individual.

(C) Each institution of higher education that collects information about an individual by means of an Internet site or that collects information about the computer network location or identity of a user of the Internet site shall prominently post on its Internet site:

*(i)* what information is being collected through the site about the individual; and

*(ii)* what information is being collected through the site about the computer network location or identity of a user of the Internet site, including what information is being collected by means that are not obvious.

(D) Each institution of higher education must establish a reasonable procedure under which individuals may have incorrect information about them corrected. The correction procedure may not unduly burden the individual seeking to have information corrected.

(E) Each institution of higher education shall identify its information collection practices and post that information in its Internet site privacy and security policy. The e-mail addresses of members of the public that are provided to institutions of higher education for electronic communication are confidential and may not be disclosed by the institution of higher education unless the affected member of the public affirmatively consents to the disclosure of his or her e-mail address.

(3) Requirements Applicable to Institutions of Higher Education.

(A) With the exception of confidential information, information protected by laws designed to protect an individual's privacy interests, information that might assist terrorists or other malevolent actors in exploiting, creating or enhancing vulnerabilities, and information not subject to disclosure under the Texas Public Information Act, institutions of higher education are encouraged to post information on the Internet in an accessible format. Information about the design and posting of information on state Web sites is available at http://www.dir.state.tx.us/standards/srrpub11.htm.

(B) Institutions of higher education may not sell or release the e-mail addresses of members of the public that have been provided to communicate electronically with the institution of higher education without the affirmative consent of the affected member of the public.

*§206.75. Linking And Indexing State Web Sites.*

(a) All new or changed HTML documents on an institution of higher education Web site that meet the criteria of a "state publication" as defined by the Texas State Library and Archives Commission shall include the meta tags required by the Texas State Library and Archives Commission (13 TAC §3.9).

(b) The home page of each institution of higher education Web site shall incorporate TRAIL metadata and shall:

(1) Provide links to the following State of Texas resources:

(A) Texas home page;

(B) Texas Homeland Security Web site;

(C) Link Policy, or the Site Policies page;

(D) Statewide Search Web site.

(2) Provide individual links to the following institution of higher education information, or to the Site Policies page with links to the following:

(A) Privacy and Security policy;

(B) Accessibility policy;

(C) Institution of higher education contact information;

(D) Description of the Open Records/Public Information Act policy/procedures of the institution of higher education;

(E) Compact With Texans.

(c) All key public entry points shall provide links to the following:

(1) Institution of higher education home page;

(2) Provide individual links to the following institution of higher education information, or to the Site Policies page with links to the following:

(3) Institution of higher education contact information;

(4) Accessibility policy;

(5) Privacy and Security policy.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405445
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

## CHAPTER 208. COMMUNICATIONS WIRING STANDARDS

**1 TAC §208.1, §208.2**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Information Resources or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Department of Information Resources (department) proposes the repeal of 1 TAC Chapter 208, §208.1 and §208.2, relating to communications wiring standards. By separate action, the department will publish proposed new communication wiring rules that identify the standards applicable to state agencies other than institutions of higher education and the standards applicable to institutions of higher education.

Dustin Lanier, Strategic Initiatives Division Director for the department, has determined that there will be no fiscal implications for state or local government if 1 TAC Chapter 208 is repealed. The public will benefit from the clarification resulting from repealing these rules and proposing new communication wiring rules that distinguish between the standards applicable to state agencies other than institutions of higher education and the standards applicable to institutions of higher education.

Mr. Lanier believes there will be no different effect on small businesses than there is on large businesses since the rules do not affect businesses. He also believes there is no additional anticipated economic cost to persons if the rules are repealed.

Comments on the proposed repeal of 1 TAC Chapter 208 may be submitted to Renée Mauzy, General Counsel, Department of Information Resources, P.O. Box 13564, Austin, Texas 78711, or electronically to renee.mauzy@dir.state.tx.us no later than 5:00 p.m. CT, within 30 days of publication.

The repeal is proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

Texas Government Code, Chapter 2054 and §2001.039(c) are affected by the proposed repeal.

*§208.1. Definitions.*

*§208.2. Communications Wiring Standards.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 26, 2004.

TRD-200405396
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

## CHAPTER 208. COMMUNICATIONS WIRING STANDARDS

The Department of Information Resources (department) proposes to publish for public comment proposed new 1 TAC Chapter 208, §§208.1 - 208.3, 208.10, and 208.20 in their entirety, as a portion of the rules affected by the implementation of §2054.121, Texas Government Code, Coordination with Institutions of Higher Education. The department and the Information Technology Council of Higher Education have identified former department Chapter 208 as needing restructuring to clarify the instances in which the rules will apply to institutions of higher education. The department intends to publish repeal of Chapter 208 by separate action. There have been no other substantive changes to the rules, other than the restructuring.

The new rules are structured into three subchapters. Subchapter A, §§208.1 - 208.3 are definitions. Subchapter B, §208.10 contains the rule that applies only to state agencies. Subchapter C, §208.20 contains the rule that applies only to institutions of higher education.

The new sections that are proposed for publication underwent the analysis required by §2054.121, Texas Government Code, and were found to have no impact on the mission of higher education, student populations, and federal grant requirements. Alternate methods of implementation of this policy were considered to achieve the purpose of the rules and no alternates were found. The department did consider exempting institutions of higher education from all or part of the requirements of the rules but found that the public interest was served by the applicability of the rules to institutions of higher education.

Dustin Lanier, Strategic Initiatives Division Director for the department, has determined that there will be no fiscal implications for state or local government if the proposed new sections are adopted. The public will benefit by the adoption.

Mr. Lanier believes there will be no different effect on small businesses than there is on large businesses, because the rules do not apply to businesses, and that there is no additional anticipated economic cost to persons if the new sections are adopted.

Comments on the adoption of the proposed new sections may be submitted to Renée Mauzy, General Counsel, Department of

Information Resources, via mail to P.O. Box 13564, Austin, Texas 78711, or electronically to renee.mauzy@dir.state.tx.us no later than 5:00 p.m. CT, within 30 days after publication.

## SUBCHAPTER A. DEFINITIONS

**1 TAC §§208.1 - 208.3**

The new sections are proposed under §2054.121 and §2054.052(a), Texas Government Code.

The new sections are proposed to implement §2054.121, Texas Government Code, which requires the repeal and readoption of rules in a manner that expressly applies to institutions of higher education, and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

*§208.1. Key Terms and Technologies for Communications Wiring Standards.*

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) ANSI--The American National Standards Institute.

(2) EIA--The Electronics Industry Association.

(3) TIA--The Telecommunications Industry Association.

*§208.2. Institution of Higher Education.*

A university system or institution of higher education as defined by §61.003, Education Code.

*§208.3. State Agency.*

A department, commission, board, office, council, authority, or other agency, other than an institution of higher education, in the executive or judicial branch of state government, that is created by the constitution or a statute of this state.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405448
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

## SUBCHAPTER B. WIRING STATE AGENCY BUILDINGS

**1 TAC §208.10**

The new section is proposed under §2054.121 and §2054.052(a), Texas Government Code.

The new section is proposed to implement §2054.121, Texas Government Code, which requires the repeal and readoption of rules in a manner that expressly applies to institutions of higher education, and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

*§208.10. State Agency Wiring Standards.*

All state agencies will adhere to the following standards when wiring or re-wiring state agency-owned or state-leased space:

(1) ANSI/EIA/TIA-568-2001, Commercial Building Telecommunications Cabling Standard or its most recent successor document. This applies to the telecommunications wiring for buildings that are office-oriented and when ANSI/EIA/TIA-570-1999 is not selected. The term "commercial enterprises" is used in ANSI/EIA/TIA-568-1991 to differentiate between office buildings and buildings designed for industrial enterprises. ST-type fiber connectors shall be used for fiber optic terminations.

(2) ANSI/EIA/TIA-570-1999, Residential and Light Commercial Building Telecommunications Wiring Standard or its most recent successor document, when planning and designing premises-wiring systems intended for connecting one to four exchange access lines to various types of customer-premises equipment when ANSI/EIA/TIA-568-2001 is not selected.

(3) ANSI/EIA/TIA-569-2000, Commercial Building Telecommunications Pathways and Spaces or its most recent successor document, when planning and designing state agency-owned and state-leased space to accommodate telecommunications system wiring.

(4) ANSI/EIA/TIA-606-1993, Administration Standard for the Telecommunications Infrastructure of Commercial Buildings or its most recent successor document, when documenting and administering telecommunications infrastructures in state agency-owned and state-leased space.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405449
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

## SUBCHAPTER C. WIRING INSTITUTION OF HIGHER EDUCATION BUILDINGS

**1 TAC §208.20**

The new section is proposed under §2054.121 and §2054.052(a), Texas Government Code.

The new section is proposed to implement §2054.121, Texas Government Code, which requires the repeal and readoption of rules in a manner that expressly applies to institutions of higher education, and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

*§208.20. Institution of Higher Education Wiring Standards.*

All institutions of higher education and state agencies will adhere to the following standards when wiring or re-wiring institution of higher education-owned or leased space:

(1) ANSI/EIA/TIA-568-2001, Commercial Building Telecommunications Cabling Standard or its most recent successor document. This applies to the telecommunications wiring for buildings that are office-oriented and when ANSI/EIA/TIA-570-1999 is not selected. The term "commercial enterprises" is used in ANSI/EIA/TIA-568-1991 to differentiate between office buildings and buildings designed for industrial enterprises. ST-type fiber connectors shall be used for fiber optic terminations.

(2) ANSI/EIA/TIA-570-1999, Residential and Light Commercial Building Telecommunications Wiring Standard or its most recent successor document, when planning and designing premises-wiring systems intended for connecting one to four exchange access lines to various types of customer-premises equipment when ANSI/EIA/TIA-568-2001 is not selected.

(3) ANSI/EIA/TIA-569-2000, Commercial Building Telecommunications Pathways and Spaces or its most recent successor document, when planning and designing institution of higher education-owned and leased space to accommodate telecommunications system wiring.

(4) ANSI/EIA/TIA-606-1993, Administration Standard for the Telecommunications Infrastructure of Commercial Buildings or its most recent successor document, when documenting and administering telecommunications infrastructures in institution of higher education owned and leased space.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405450
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

## CHAPTER 209. MINIMUM STANDARDS FOR MEETINGS HELD BY VIDEOCONFERENCE

**1 TAC §209.1, §209.2**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Information Resources or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Department of Information Resources (department) proposes the repeal of 1 TAC Chapter 209, §209.1 and §209.2, relating to minimum standards for meetings held by videoconference. By separate action, the department will publish proposed new videoconference rules that identify the standards applicable to state agencies other than institutions of higher education and the standards applicable to institutions of higher education.

Dustin Lanier, Strategic Initiatives Division Director for the department, has determined that there will be no fiscal implications for state or local government if 1 TAC Chapter 209 is repealed. The public will benefit from the clarification resulting from repealing these rules and proposing new videoconference rules that distinguish between the standards applicable to state agencies other than institutions of higher education and the standards applicable to institutions of higher education.

Mr. Lanier believes there will be no different effect on small businesses than there is on large businesses since the rules do not affect businesses. He also believes there is no additional anticipated economic cost to persons if the rules are repealed.

Comments on the proposed repeal of 1 TAC Chapter 209 may be submitted to Renée Mauzy, General Counsel, Department of Information Resources, P.O. Box 13564, Austin, Texas 78711, or electronically to renee.mauzy@dir.state.tx.us no later than 5:00 p.m. CT, within 30 days of publication.

The repeal is proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

Texas Government Code, Chapter 2054 and §2001.039(c) are affected by the proposed repeal.

*§209.1. Definitions Applicable to Minimum Standards for Meetings held by Videoconference.*

*§209.2. Videoconference Standards.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 26, 2004.

TRD-200405397
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

## CHAPTER 209. MINIMUM STANDARDS FOR MEETINGS HELD BY VIDEOCONFERENCE

The Department of Information Resources (department) proposes to publish for public comment 1 TAC Chapter 209, §§209.1 - 209.3, 209.10 - 209.13, and 209.30 - 209.33 in their entirety, as a portion of the rules affected by the implementation of §2054.121, Texas Government Code, Coordination with Institutions of Higher Education. The department and the Information Technology Council of Higher Education have identified former department Chapter 209 as needing restructuring to clarify the instances in which the rules will apply to institutions of higher education. The department intends to publish repeal of existing Chapter 209 by separate action. In new Chapter 209, §209.11 (for state agencies) and §209.31 (for institutions of higher education) update the video standards to current technology. Section 209.12(8) (for state agencies) and §209.32(8) (for institutions of higher education) change the frame structure from 30 frames per second (FPS) to 384 kbs. There have been no other substantive changes to the rules, other than the restructuring.

The new sections are structured into three subchapters. Subchapter A, §§209.1 - 209.3 are definitions. Subchapter B, §§209.10 - 209.13 contains the rules that apply only to state agencies other than institutions of higher education. Subchapter C, §§209.30 - 209.33 contains the rules that apply only to institutions of higher education.

The new sections that are proposed for publication underwent the analysis required by §2054.121, Texas Government Code, and were found to have no impact on the mission of higher education, student populations, and federal grant requirements. Alternate methods of implementation of this policy were considered to achieve the purpose of the rules, and no alternates were found. The department did consider exempting institutions of higher education from all or part of the requirements of the rules, but determined that the public interest would be served by the application of the rules to institutions of higher education.

Dustin Lanier, Strategic Initiatives Division Director for the department, has determined that there will be no fiscal implications for state or local government if the proposed new sections are adopted. The public will benefit by the adoption.

Mr. Lanier believes there will be no different effect on small businesses than there is on large businesses, because the rules do not apply to businesses, and that there is no additional anticipated economic cost to persons if the new sections are adopted.

Comments on the adoption of the proposed new sections may be submitted to Renée Mauzy, General Counsel, Department of Information Resources, via mail to P.O. Box 13564, Austin, Texas 78711, or electronically to renee.mauzy@dir.state.tx.us no later than 5:00 p.m. CT, within 30 days after publication.

## SUBCHAPTER A. DEFINITIONS

**1 TAC §§209.1 - 209.3**

The new sections are proposed under §2054.121 and §2054.052(a), Texas Government Code.

The new sections are proposed to implement §2054.121, Texas Government Code, which requires the repeal and readoption of rules in a manner that expressly applies to institutions of higher education, and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

*§209.1. Applicable Terms and Technologies for Meetings Held by Videoconference.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Codec (Coder/Decoder)--A device for converting analog signals, in this case video and/or audiosignals, to a digital signal and compressing the digital data in the process.

(2) Compressed video--Video data that has been digitized and in the process, condensed by the use of one or more of the common video compression processes (lossy, lossless, interframe compression, etc.). A codec produces compressed video and uncompresses the video at the remote end.

(3) Governmental body--Shall have the meaning assigned to that term in the Texas Open Meetings Act, §551.001, Texas Government Code.

(4) ITU-T--International Telecommunication Union-Telecommunications Standardization Sector.

(5) NTSC--National Television Standards Committee.

(6) Open or closed meetings--Shall have the meanings assigned to those terms in the Texas Open Meetings Act, §551.001, Texas Government Code.

(7) Real-Time video--Less than one second latency delay in transmission.

(8) Videoconference--Real-time video and audio communications between or among multiple sites.

*§209.2 Institution of Higher Education.*

A university system or institution of higher education as defined by §61.003, Education Code.

*§209.3. State Agency.*

A department, commission, board, office, council, authority, or other agency, other than an institution of higher education, in the executive or judicial branch of state government, that is created by the constitution or a statute of this state.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405451
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

## SUBCHAPTER B. VIDEOCONFERENCES HELD BY AGENCIES AND OTHER GOVERNMENTAL BODIES, EXCLUDING INSTITUTIONS OF HIGHER EDUCATION

**1 TAC §§209.10 - 209.13**

The new sections are proposed under §2054.121 and §2054.052(a), Texas Government Code.

The new sections are proposed to implement §2054.121, Texas Government Code, which requires the repeal and readoption of rules in a manner that expressly applies to institutions of higher education, and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

*§209.10. Analog Video.*

A governmental body holding an open or closed meeting by videoconference using full motion real-time analog video transmissions shall meet existing NTSC standards.

*§209.11. Compressed Video.*

A governmental body holding an open or closed meeting by videoconference using compressed video shall use equipment meeting the minimum technical standards listed below for the type of network used. Use of equipment meeting these standards does not preclude the use of proprietary vendor protocols as long as the governmental body has received certification from the vendor stating that the vendor's equipment and proprietary software protocol release version meets or exceeds each of the specified standards.

(1) ITU-T Recommendation H.221-1999, Frame Structure for a 64 to 1920 kbit/s Channel in Audiovisual Teleservices.

(2) ITU-T Recommendation H.230-1999, Frame synchronous Control and Indication Signals for Audiovisual Teleservices.

(3) ITU-T Recommendation H.231-1997, Multipoint Control Units for Audiovisual Systems Using Digital Channels up to 2 Mbit/s.

(4) ITU-T Recommendation H.242-1999, System for Establishing Communications Between Audiovisual Terminals Using Digital Channels up to 2 Mbit/s.

(5) ITU-T Recommendation H.243-2000, Procedures for Establishing Communication Between Three or More Audiovisual Terminals Using Digital Channels up to 2 Mbit/s.

(6) ITU-T Recommendation H.245-2003, Control protocol for multimedia communication.

(7) ITU-T Recommendation H.261-1993, Video Codec for Audiovisual Services at px64 kbit/s.

(8) ITU-T Recommendation H.320-1999, Narrow-band Visual Telephone Systems and Terminal Equipment.

(9) ITU-T Recommendation H.323-2003, Packet-based multimedia communications systems.

(10) ITU-T Recommendation H.450-1998, Generic functional protocol for the support of supplementary services in H.323.

*§209.12. Perceptibility of Audio and Video Signals.*

A videoconference shall adhere to the following standards with respect to the perceptibility of audio and video signals:

(1) Each portion of a meeting held by videoconference that is required to be open to the public by the Texas Open Meetings Act, Chapter 551, Texas Government Code, shall be visible and audible to the public at each location specified in §551.127(e), Texas Government Code.

(2) Each location specified in §551.127(e), Texas Government Code, shall have two-way communication between with each other meeting location during the entire meeting being held by videoconference.

(3) Each participant in the videoconference call, while speaking, shall be clearly visible and audible to each other participant in the videoconference call. In addition, during the portions of a meeting required to be open by Chapter 551, Texas Government Code, each participant, while speaking, shall be clearly visible and audible to members of the public who are in attendance at a location of the meeting.

(4) The audience and members of the governmental body shall have full view of at least one monitor at each meeting location.

(5) Audio signals perceptible from the remote videoconferencing sites shall be of similar quality and volume as the local audio at the originating site.

(6) The quality of the audio and video signals perceptible by members of the public at each meeting location shall meet or exceed the quality of the audio and video signals perceptible by members of the government body participating in the meeting.

(7) The quality of the audio and video signals perceptible by members of the public at each meeting location shall be of sufficient quality so that members of the public present at each meeting location can observe the demeanor and hear the voice of each participant in the open portion of the meeting.

(8) All video transmissions shall be at least 384 kbs and use full common intermediate format (CIF) quality transmission.

(9) Videoconference calls held between or among sites utilizing different vendor equipment shall adhere to the ITU-T standards listed in this section.

(10) Videoconferences involving more than two sites shall be controlled such that the received video at all sites will switch to the speaking participant's site within two seconds of the participant's commencement of speaking.

(11) All videoconferences shall be in color and monitors for the viewing public and for members of the governmental body shall present color video.

*§209.13. Other Recommendations.*

State agencies conducting open or closed meetings by videoconference call shall review and consider any applicable recommendations promulgated by the department. Such recommendations may be obtained directly from the department or may be accessed via the Web at the following location: http://www.dir.state.tx.us.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405452
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

## SUBCHAPTER C. VIDEOCONFERENCES HELD BY INSTITUTIONS OF HIGHER EDUCATION

**1 TAC §§209.30 - 209.33**

The new sections are proposed under §2054.121 and §2054.052(a), Texas Government Code.

The new sections are proposed to implement §2054.121, Texas Government Code, which requires the repeal and readoption of rules in a manner that expressly applies to institutions of higher education, and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

*§209.30. Analog Video.*

An institution of higher education holding an open or closed meeting by videoconference using full motion real-time analog video transmissions shall meet existing NTSC standards.

*§209.31. Compressed Video.*

An institution of higher education holding an open or closed meeting by videoconference using compressed video shall use equipment meeting the minimum technical standards listed below for the type of network used. Use of equipment meeting these standards does not preclude the use of proprietary vendor protocols as long as the institution of higher education has received certification from the vendor stating that the vendor's equipment and proprietary software protocol release version meets or exceeds each of the specified standards.

(1) ITU-T Recommendation H.221-1999, Frame Structure for a 64 to 1920 kbit/s Channel in Audiovisual Teleservices.

(2) ITU-T Recommendation H.230-1999, Frame synchronous Control and Indication Signals for Audiovisual Teleservices.

(3) ITU-T Recommendation H.231-1997, Multipoint Control Units for Audiovisual Systems Using Digital Channels up to 2 Mbit/s.

(4) ITU-T Recommendation H.242-1999, System for Establishing Communications Between Audiovisual Terminals Using Digital Channels up to 2 Mbit/s.

(5) ITU-T Recommendation H.243-2000, Procedures for Establishing Communication Between Three or More Audiovisual Terminals Using Digital Channels up to 2 Mbit/s.

(6) ITU-T Recommendation H.245-2003, Control protocol for multimedia communication.

(7) ITU-T Recommendation H.261-1993, Video Codec for Audiovisual Services at px64 kbit/s.

(8) ITU-T Recommendation H.320-1999, Narrow-band Visual Telephone Systems and Terminal Equipment.

(9) ITU-T Recommendation H.323-2003, Packet-based multimedia communications systems.

(10) ITU-T Recommendation H.450-1998, Generic functional protocol for the support of supplementary services in H.323.

*§209.32. Perceptibility of Audio and Video Signals.*

A videoconference shall adhere to the following standards with respect to the perceptibility of audio and video signals:

(1) Each portion of a meeting held by videoconference that is required to be open to the public by the Texas Open Meetings Act, Chapter 551, Texas Government Code, shall be visible and audible to the public at each location specified in §551.127(e), Texas Government Code.

(2) Each location specified in §551.127(e), Texas Government Code, shall have two-way communication between with each other meeting location during the entire meeting being held by videoconference.

(3) Each participant in the videoconference call, while speaking, shall be clearly visible and audible to each other participant in the videoconference call. In addition, during the open portions of a meeting required to be open by Chapter 551, Texas Government Code, each participant, while speaking, shall be clearly visible and audible to members of the public who are in attendance at a location of the meeting.

(4) The audience and members of the institution of higher education shall have full view of at least one monitor at each meeting location.

(5) Audio signals perceptible from the remote videoconferencing sites shall be of similar quality and volume as the local audio at the originating site.

(6) The quality of the audio and video signals perceptible by members of the public at each meeting location shall meet or exceed the quality of the audio and video signals perceptible by members of the institution of higher education participating in the meeting.

(7) The quality of the audio and video signals perceptible by members of the public at each meeting location shall be of sufficient quality so that members of the public present at each meeting location can observe the demeanor and hear the voice of each participant in the open portion of the meeting.

(8) All video transmissions shall be at a minimum of 384 kbs and use full common intermediate format (CIF) quality transmission.

(9) Videoconference calls held between or among sites utilizing different vendor equipment shall adhere to the ITU-T standards listed in this section.

(10) Videoconferences involving more than two sites shall be controlled such that the received video at all sites will switch to the speaking participant's site within two seconds of the participant's commencement of speaking.

(11) All videoconferences shall be in color and monitors for the viewing public and for members of the institution shall present color video.

*§209.33. Other Recommendations.*

Institutions of higher education conducting open or closed meetings by videoconference call shall review and consider any applicable recommendations promulgated by the department. Such recommendations may be obtained directly from the department or may be accessed via the Web at the following location: http://www.dir.state.tx.us.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405453
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

## CHAPTER 211. INFORMATION RESOURCES MANAGERS

The Department of Information Resources (department) proposes to publish for public comment on new 1 TAC Chapter 211, §§211.1 - 211.3, 211.10, 211.11, 211.20, and 211.21 in their entirety, as a portion of the rules affected by the implementation of §2054.121, Texas Government Code, Coordination with Institutions of Higher Education. The department and the Information Technology Council of Higher Education have identified former §201.3, concerning information resources managers, as needing restructuring to clarify the instances in which the rule will apply to institutions of higher education. The department intends to publish the repeal of 1 TAC §201.3 by separate action. In new Chapter 211, §211.11 (for state agencies) and §211.21 (for institutions of higher education) remove historical dates from the text. Section 201.3(a)(3), which prohibited an agency information resources manager from serving on the department board, has been deleted from the rules applicable to state agencies other than institutions of higher education. It is inconsistent with §2054.021(d), Texas Government Code, which authorizes an ex officio member of the department's board to designate the member's information resources manager to serve in the member's place on the department board. Section 211.20(b) provides that an institution of higher education with separate computing facilities for academic and administrative

computing services may designate separate information resources managers. There have been no other substantive changes to the rule, other than the restructuring.

The department disagreed with a recommendation by the Information Technology Council of Higher Education that the proposed rules encourage, rather than require, that the information resources managers of institutions of higher education complete continuing education requirements approved by the board of the department. For that reason, proposed §211.21(1) maintains the continuing education requirement that is currently in 1 TAC §201.3, which is the department rule being proposed for repeal under a separately-published rulemaking.

The new sections are structured into three subchapters. Subchapter A, §§211.1 - 211.3 are definitions. Subchapter B, §211.10 and §211.11 contains the rules that apply only to state agencies that are not also institutions of higher education. Subchapter C, §211.20 and §211.21, contains the rules that apply only to institutions of higher education.

The new sections being proposed for publication underwent the analysis required by §2054.121, Texas Government Code, and were found to have no impact on the mission of higher education, student populations, and federal grant requirements. Alternate methods of implementation of this policy were considered to achieve the purpose of the rules and no alternates were found. The department did consider exempting institutions of higher education from all or part of the requirements of the rules but found that the public interest is served by application of the rules to institutions of higher education.

Dustin Lanier, Strategic Initiatives Division Director for the department, has determined that there will be no fiscal implications for state or local government if the proposed new sections are adopted. The public will benefit by the adoption.

Mr. Lanier believes there will be no different effect on small businesses than there is on large businesses, because the rules do not apply to businesses, and that there is no additional anticipated economic cost to persons if the new sections are adopted.

Comments on the adoption of the proposed new sections may be submitted to Renée Mauzy, General Counsel, Department of Information Resources, via mail to P.O. Box 13564, Austin, Texas 78711, or electronically to renee.mauzy@dir.state.tx.us no later than 5:00 p.m. CT, within 30 days after publication.

## SUBCHAPTER A. DEFINITIONS

**1 TAC §§211.1 - 211.3**

The new sections are proposed under §2054.121 and §2054.052(a), Texas Government Code.

The new sections are proposed to implement §2054.121, Texas Government Code, which requires the repeal and readoption of rules in a manner that expressly applies to institutions of higher education, and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

*§211.1. Applicable Terms and Technologies for Information Resources Managers.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Board--The governing board of the Department of Information Resources.

(2) Department--The Department of Information Resources.

(3) Information resources--The procedures, equipment, and software that are employed, designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information, and associated personnel including consultants and contractors.

(4) Information resources technologies--Data processing and telecommunications hardware, software, services, supplies, personnel, facility resources, maintenance, and training.

*§211.2. Institution of Higher Education.*

A university system or institution of higher education as defined by §61.003, Education Code.

*§211.3. State Agency.*

A department, commission, board, office, council, authority, or other agency, other than an institution of higher education, in the executive or judicial branch of state government, that is created by the constitution or a statute of this state.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405454
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

## SUBCHAPTER B. STATE AGENCY INFORMATION RESOURCES MANAGERS

**1 TAC §211.10, §211.11**

The new sections are proposed under §2054.121 and §2054.052(a), Texas Government Code.

The new sections are proposed to implement §2054.121, Texas Government Code, which requires the repeal and readoption of rules in a manner that expressly applies to institutions of higher education, and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

*§211.10. Selection of Information Resources Managers.*

(a) The head of each state agency is ultimately responsible for the management of state information resources.

(b) The head of a state agency may serve as the state agency's information resources manager or may designate another senior official to serve as the information resources manager on their behalf. The designation of a state agency information resources manager is intended to establish clear accountability for setting policy for information resources management activities, provide for greater coordination of the state agency's information activities, and ensure greater visibility of such activities within and between state agencies.

(c) The head of each state agency shall designate an information resources manager. The state agency's designation must contain

the name, title, authority, responsibilities, organizational resources, education and experience of the proposed information resources manager in the format prescribed by the department. The department must acknowledge the receipt of the designation of the information resources manager within 30 days after receipt of the designation.

*§211.11. Initial Qualifications and Continuing Education.*

Any person who is designated by the head of a state agency as the information resources manager of that state agency must be a senior official of the state agency. State agency heads are encouraged, but not required, to make designations on the basis of qualification guidelines provided by the department. Information resources managers for agencies should, as a minimum, possess a four-year college or university degree from a fully accredited institution.

(1) Each designated state agency information resources manager shall be required to complete continuing education requirements approved by the board of the department and provided by the department. The head of each agency is responsible for ensuring their appointee remains qualified to serve as information resources manager.

(2) The department will provide continuing education programs, including educational materials and seminars, to assure that state agency information resources managers remain current in the field of information resources management.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405455
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

## SUBCHAPTER C. INSTITUTION OF HIGHER EDUCATION INFORMATION RESOURCES MANAGERS

**1 TAC §211.20, §211.21**

The new sections are proposed under §2054.121 and §2054.052(a), Texas Government Code.

The new sections are proposed to implement §2054.121, Texas Government Code, which requires the repeal and readoption of rules in a manner that expressly applies to institutions of higher education, and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

*§211.20. Selection of Information Resources Managers.*

(a) The head of each institution of higher education is ultimately responsible for the management of state information resources.

(b) The head of an institution of higher education may serve as the institution's information resources manager or may designate another senior official to serve as the information resources manager on their behalf. If an institution of higher education has separate computing facilities for academic and administrative computing services, the institution may designate separate information resources managers for academic and administrative information resources. The designation of an institution of higher education information resources manager is intended to establish clear accountability for setting policy for information resources management activities, provide for greater coordination of the institution's information activities, and ensure greater visibility of such activities within and between institutions of higher education.

(c) A member of the board of the department may not also serve as the information resources manager of an institution of higher education.

(d) The head of each institution of higher education shall designate an information resources manager. The institution of higher education's designation must contain the name, title, authority, responsibilities, organizational resources, education and experience of the proposed information resources manager in the format prescribed by the department. The department must acknowledge receipt of the designation of the institution of higher education's information resources manager within 30 days after receipt of the designation.

*§211.21. Initial Qualifications and Continuing Education.*

Any person who is designated by the head of an institution of higher education as the information resources manager must be a senior official of that institution. Institutions are encouraged, but not required, to make designations on the basis of qualification guidelines provided by the department.

(1) Continuing education is an essential component for information resources managers to remain qualified to serve as an information resources manager. Each designated information resources manager shall complete continuing education requirements approved by the board of the department and provided by the department. The head of each institution of higher education is responsible for ensuring their appointee remains qualified to serve as their information resources manager.

(2) The department will provide continuing education programs, including educational materials and seminars, to assure that institution of higher education information resources managers remain current in the field of information resources management.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405456
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-6448

♦ ♦ ♦

# TITLE 13. CULTURAL RESOURCES

## PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

## CHAPTER 8. TEXSHARE LIBRARY CONSORTIUM

**13 TAC §8.3, §8.5**

The Texas State Library and Archives Commission proposes to amend 13 TAC §8.3 and §8.5 regarding the TexShare Library Consortium. The proposed revisions would restrict a single academic institution to a single TexShare membership, eliminating multiple library memberships from the same institution. The proposed revisions would clarify that TexShare member libraries may not enter into agreements that would have the effect of providing TexShare services to entities that do not qualify for membership in the consortium.

Division Director Beverley Shirley has determined that for the first five years the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new rule.

Ms. Shirley also has determined that for each of the first five years the section is in effect the public benefits anticipated as a result of enforcing the section will be to accomplish consistency regarding unit of membership for institutions of higher education and community colleges and bring the rules into closer alignment with definitions in Government Code §441.221 and Education Code §61.003 and to insure that funding appropriated for the TexShare consortium is used solely to provide services for entities that statute defines as qualifying for these services. There are no cost implications to either small businesses or persons required to comply with the new rule.

Written comments on the new rules may be submitted to Beverley Shirley, Library Resource Sharing Division, Texas State Library and Archives Commission, Box 12927, Austin, Texas 78711-2927; fax: (512) 936-2306.

The amendments are proposed under Government Code §441.225(b), which authorizes the commission to adopt rules to govern the operation of the consortium.

The amended section affects Government Code, §441.221 through §441.230.

*§8.3. Membership.*

(a) Eligibility. Membership in the consortium is open to all institutions of higher education as determined by the Texas Higher Education Coordinating Board, and realized through the libraries that serve those institutions, to libraries of clinical medicine, and to all public libraries that are members of the state library system, as defined in Government Code, §441.127.

(b) - (c) (No change.)

(d) Multiple Libraries. For institutions of higher education, the unit of membership in the TexShare Library Consortium shall be the institution. Institutions of higher education, as determined by the Texas Higher Education Coordinating Board, with libraries in multiple locations shall apply as a single unit. [~~Community college districts may apply as a single unit or as individual campuses; other institutions of higher education with libraries in multiple locations shall apply as a single unit.~~] Community colleges shall apply per their certification by the Texas Higher Education Coordinating Board, in accordance with Government Code §61.063. Public libraries with branches shall apply as a single unit. [~~Libraries affiliated with professional schools that demonstrate they are administered and budgeted independently of the campus library may apply for separate membership.~~] For libraries of clinical medicine, the unit of membership shall be the non-profit corporation; those having multiple locations shall apply as a single unit. The various locations served by a non-profit corporation must be fully governed and owned by that non-profit corporation in order to qualify under the non-profit corporation's membership. Non-profit corporations that amalgamate other, independently-administered organizations that are not fully governed and owned by that nonprofit corporation must submit a separate membership application for each independent organization regardless of any pooled or central funding.

(e) - (g) (No change.)

*§8.5. Programs.*

(a) The programs of the consortium shall include activities designed to facilitate library resource sharing. Such activities may include:

(1) - (4) (No change.)

(b) Programs of the consortium are established and administered for the benefit of consortium members. Consortium members may sometimes enter into formal or informal agreements with non-member entities. Under these agreements, consortium members may not provide systematic access to consortium services to persons other than those constituting their primary user communities. This provision should not be construed in such a way as to limit a member institution's ability to provide on-site access to TexShare databases to members of the public.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405442
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 463-5459

♦ ♦ ♦

# TITLE 16. ECONOMIC REGULATION

## PART 6. TEXAS MOTOR VEHICLE BOARD

### CHAPTER 103. GENERAL RULES

**16 TAC §103.15, §103.16**

The Texas Motor Vehicle Board of the Texas Department of Transportation proposes new §103.15 and §103.16, concerning the renewal of licenses and the administration of fees generated by new and renewal licenses. These proposed new rules are intended to replace and expand 16 TAC §111.13, Refund of Fees, which applied to holders of general distinguishing numbers, rather than to the entire licensee body. Section 111.13 is being simultaneously repealed.

The proposed new §103.15 provides guidelines governing the assessment and refund of certain fees during the licensing process. Subsection (a) of the proposed section states that no refund of licensing fees will be made if a license is cancelled, either voluntarily or involuntarily. Additionally, the proposed section states in subsection (b) that the Board will charge a fee to issue a duplicate copy of a license. This language will implement the Board's authority under the Texas Occupations Code §2301.264(a)(8), which directs the Board to collect a $50 fee for the issuance of a duplicate license. The rule does, however, provide a one-time exception to the collection of the duplicate license fee if the licensee does not receive the license

and makes a timely request for its replacement. Proposed subsection (c) allows an applicant for a license to withdraw an application prior to issuance, and receive a full refund of paid licensing fees, if requested in writing. Proposed subsections (d) and (e) allow the Board to retain paid licensing fees as earned fees when an applicant for a new or renewal license abandons an application and fails to request a refund of fees within a specified period of time.

The proposed new §103.16 states that a licensee must file a complete renewal application before the current license expires. It also states that if the licensee fails to submit a renewal application with all required information and fees within 90 days of the date of expiration of the current license, then that licensee will not be allowed to renew. Instead, the licensee will be required to apply for a new license. This language provides a framework for the implementation of the Board's authority under the Texas Occupations Code §2301.264(b), which states that a person who fails to apply for a license or pay a fee required under the Occupations Code must pay a penalty for each 30 days of delinquency. The proposed language of the rule institutes a 90-day limit for that occurrence to encourage licensees to make timely application for renewal, and also, to minimize administrative difficulties in allowing the renewal of licenses after expiration.

Brett Bray, Director, Motor Vehicle Division, has determined that for the first five-year period the proposed sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed new rules.

Mr. Bray has also determined that for each year of the first five years the proposed new rules are in effect, the anticipated public benefit will be a clearer explanation of the Board's regulations governing fees and renewals for all licensees. Furthermore, the public will benefit by the agency's increased ability to conserve its administrative and accounting resources in dealing with delinquent parties and payments. There will be no significant effect on small businesses. Mr. Bray anticipates that there will be no significant economic cost to persons who comply with the new rules as proposed. Mr. Bray has also certified that there will be no impact on local economies or overall employment as a result of enforcing or administering the sections.

Comments (15 copies) may be submitted to Brett Bray, Director, Motor Vehicle Division, Texas Department of Transportation, P.O. Box 2293, Austin, Texas 78768. The Motor Vehicle Board will consider adoption of the proposals at its meeting on November 4, 2004. The deadline for receipt of comments on the proposed new rules is 5:00 p.m. on October 15, 2004.

The new rules are proposed under Texas Occupations Code §2301.155, and Texas Transportation Code §503.002, which provide the Board with authority to adopt rules as necessary and convenient to effectuate the provisions of the Act and to govern practice and procedure before the agency.

Texas Occupations Code, §§2301.264, 2301.266, 2301.301, 2301.302, and 2301.304 are affected by the proposed new rules.

*§103.15. Administration of Licensing Fees.*

(a) When a license is voluntarily or involuntarily cancelled by the Board no refund of fees will be made.

(b) The Board shall charge a processing fee of $50 for each duplicate license issued to any licensee.

(1) A request for a duplicate license must be made on a form prescribed by the Board and state the reason a duplicate license is needed.

(2) A licensee may request one duplicate license at no charge if the licensee did not receive the original license and makes the request within 45 days of the time the license was mailed to the licensee.

(c) Prior to the issuance of a license, an applicant may withdraw its application and, upon written request, receive a refund of the application fees.

(d) Should an applicant fail to submit a complete new or amendment application not later than 180 days after the initial submission, the Board may retain any monies paid by the applicant as earned fees. The 180-day time period may be tolled by the director or the director's designee for good cause.

(e) Should a licensee fail to submit a complete renewal application not later than 90 days after the expiration of its prior license, the Board may retain any monies paid by the licensee as earned fees.

*§103.16. Renewal of Licenses.*

(a) A licensee must file a complete renewal application prior to the expiration of its existing license.

(b) If the licensee has not submitted to the Board a renewal application with all required information and applicable fees within 90 days after license expiration, including late fees as provided by Texas Occupations Code §2301.264(b), the licensee must apply for a new license.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 23, 2004.

TRD-200405341
Brett Bray
Director
Texas Motor Vehicle Board
Proposed date of adoption: November 4, 2004
For further information, please call: (512) 416-4899

♦ ♦ ♦

## CHAPTER 105. ADVERTISING

**16 TAC §105.33**

The Texas Motor Vehicle Board proposes new §105.33, relating to Advertisements in the Name of the Dealer, concerning the regulation of motor vehicle dealers advertising motor vehicles for sale or lease.

The new section will require a licensee to advertise in a manner that discloses the true identity of the dealer. It will also facilitate enforcement of the advertising rules by allowing the Board to determine who in fact is advertising in a misleading and deceptive manner.

Brett Bray, Director, Motor Vehicle Board, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bray has also determined that for each of the first five years the new section is in effect, the public benefit anticipated from enforcement of the section will be an increase in knowledge as to

who the consumer is contacting on the Internet. There is no anticipated cost to small business associated with complying with the new section. There will be no significant economic cost to persons who are required to comply with the proposed new section.

Comments on the proposed new section may be submitted to Brett Bray, Director, Motor Vehicle Division, P.O. Box 2293, Austin, Texas 78768. The deadline for comments is October 15, 2004. Please submit 15 copies. The Texas Motor Vehicle Board will consider the adoption of the proposed new section at its meeting on November 4, 2004.

The new section is proposed under the Texas Occupations Code, §2301.155, which provides the Board with authority to amend and adopt rules as necessary and convenient to effectuate the provisions of this chapter of the Occupations Code.

Texas Occupations Code, §2301.351 is affected by the proposed new section.

*§105.33. Advertisements in the Name of the Dealer.*

All advertisements in any form of media must include the actual name or the assumed name by which the dealership is licensed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 23, 2004.

TRD-200405348
Brett Bray
Director
Texas Motor Vehicle Board
Proposed date of adoption: November 4, 2004
For further information, please call: (512) 416-4899

♦ ♦ ♦

## CHAPTER 111. GENERAL DISTINGUISHING NUMBERS

### 16 TAC §111.6

The Texas Motor Vehicle Board proposes an amendment to §111.6, concerning Off-site Sales, which would require a licensee to insert certain items into an advertisement when advertising on the Internet.

The amendment clarifies that a vehicle sale may originate and be consummated online and not be considered an off-site sale if the requirements of the amendment are met. With the increased commercial use of the Internet by dealers selling vehicles, the addition of requirements for online advertisements will further the goal of the dealer law by assisting consumers in being able to identify and find the seller of a vehicle should problems arise. This amendment is designed to require a licensee's online advertisement to disclose the true identity of the dealer and to increase awareness that consumers should transact with a licensed dealer. Additionally, the amendment requires dealers to inform consumers that they should contact the Motor Vehicle Division should problems arise that cannot be resolved with the dealer.

Brett Bray, Director, Motor Vehicle Board, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Bray has also determined that for each of the first five years the amendment is in effect, the public benefit anticipated from enforcement of the proposed amendment will be a reduction of the number of vehicles sold through anonymous dealers in Texas. The cost to small business associated with complying with the amendment is anticipated to be minimal, involving possible changes to current online websites. There will be no significant economic cost to persons who are required to comply with the proposed amended section.

Comments on the proposed amendment may be submitted to Brett Bray, Director, Motor Vehicle Division, P.O. Box 2293, Austin, Texas 78768. The deadline for comments is October 15, 2004. Please submit 15 copies. The Texas Motor Vehicle Board will consider the adoption of the proposed amendment at its meeting on November 4, 2004.

The amendment is proposed under the Texas Occupations Code §2301.155, and Texas Transportation Code §503.002, which provides the Board with authority to adopt rules as necessary and convenient to effectuate the provisions of the enabling statutes and to govern practice and procedure before the agency.

Texas Transportation Code §§503.001, 503.021, 503.022, and 503.027 are affected by the proposed amendment.

*§111.6. Off-site Sales; Internet Sales.*

(a) Unless otherwise authorized by statute, a dealer is not permitted under the Transportation Code, §§503.001, et seq. to sell or offer for sale vehicles from a location other than an established and permanent place of business which has been approved by the Board and for which a general distinguishing number has been issued to that dealer.

(b) A sale solicited by way of an on-line web site will not be considered an off-site sale, if the dealer prominently displays on the web site the actual name or the assumed name by which the dealership is licensed, the General Distinguishing Number of the dealer and a notice that states: "Complaints about this licensee may be directed to the Texas Motor Vehicle Board, www.dot.state.tx.us."

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 23, 2004.

TRD-200405347
Brett Bray
Director
Texas Motor Vehicle Board
Proposed date of adoption: November 4, 2004
For further information, please call: (512) 416-4899

♦ ♦ ♦

### 16 TAC §111.13

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Motor Vehicle Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Motor Vehicle Board of the Texas Department of Transportation proposes the repeal of §111.13, concerning the refund of fees for general distinguishing numbers upon cancellation of a dealer's license.

The repeal of §111.13 is proposed because the Motor Vehicle Board intends to replace it with a new rule concerning the refund

of fees that will apply to every license administered by the Board. Currently, by its own terms, §111.13 applies only to the holders of general distinguishing numbers. Thus, the proposed repeal will aid the Board as it seeks to outline and clarify the parameters governing the refund of fees for all licensees.

Brett Bray, Director, Motor Vehicle Division, has determined that for the first five-year period the repeal is in effect, there will be no fiscal implications for state or local government as a result of the repeal of this section.

Mr. Bray has also determined that for each year of the first five years the repeal is in effect, the anticipated public benefit as a result of repealing this section will be to provide a clearer understanding of the rules. There will be no significant effect on small businesses or individuals. Mr. Bray has also certified that there will be no impact on local economies or overall employment as a result of the repeal of this section. There will be no significant economic cost to persons as a result of the repeal of this section.

Comments (15 copies) may be submitted to Brett Bray, Director, Motor Vehicle Division, Texas Department of Transportation, P.O. Box 2293, Austin, Texas 78768. The Motor Vehicle Board will consider adoption of the proposed repeal at its meeting on November 4, 2004. The deadline for receipt of comments is 5:00 p.m. on October 15, 2004.

The repeal is proposed under the Texas Occupations Code, §2301.155, and Texas Transportation Code §503.002, which provide the Board with authority to adopt rules as necessary and convenient to effectuate the provisions of the Act and to govern practice and procedure before the agency.

Texas Occupations Code, §2301.264(d), is affected by the proposed repeal.

*§111.13. Refund of Fees.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 23, 2004.

TRD-200405342
Brett Bray
Director
Texas Motor Vehicle Board
Proposed date of adoption: November 4, 2004
For further information, please call: (512) 416-4899

♦ ♦ ♦

# TITLE 22. EXAMINING BOARDS

## PART 4. TEXAS COSMETOLOGY COMMISSION

### CHAPTER 83. SANITARY RULINGS

**22 TAC §§83.3 - 83.5, 83.10, 83.13, 83.14, 83.17, 83.23, 83.25, 83.27, 83.30**

The Texas Cosmetology Commission proposes amendments to the following sections: §83.3, concerning Proper Quarters; §83.4, concerning Toilet/Bathrooms; §83.5, concerning Waste and Refuse; §83.10, concerning Towels; §83.13, concerning Implements, Combs, Brushes, and Rollers; §83.14, concerning Disinfection Practices and Procedures; §83.17 , concerning Prohibited Medical Practices; §83.23 , concerning Personal Hygiene; §83.25, concerning Arresting Bleeding; §83.27, concerning Dispensary and Storage Area; and §83.30, concerning Proper Labeling.

The amendments further specify the way all licensees and students must implement and maintain the sanitary rules in an establishment.

The amendments are proposed in an effort to improve health and safety standards.

Antoinette Humphrey, Executive Director, Texas Cosmetology, has determined that for the first five year period the amendments are in effect, there will be no anticipated fiscal implications for state or local government as a result of enforcing or administering the amended sections.

Ms. Humphrey has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be to better protect public health and safety. There is no anticipated effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amended sections as proposed.

Comments on the proposed amendments may be submitted to Virgil Seals, Texas Cosmetology Commission, P.O. Box 26700, Austin, Texas 78755-0700. Comments may also be submitted electronically to virgil.seals@txcc.state.tx.us or by fax to (512) 374-1564

The amendments are proposed under Texas Occupations Code, Chapter 1602, §1602.151, which provides the Commission with the authority to "adopt rules consistent with this chapter", to protect the public's health and safety.

No other statutes, articles or codes are affected by the proposed amendments.

*§83.3. Proper Quarters.*

(a) Each establishment and work area shall be kept in a clean, orderly, and sanitary condition at all times.

(b) Linoleum or tile fixtures must be tight with no broken areas or badly worn spots. Floors shall be constructed of smooth, hard-finished materials, such as quarry tile, terrazzo, ceramic tile, etc., or covered with washable composition materials such as rubber-base greaseless asphalt tile may be used. Hair cuttings must be immediately swept up and deposited in a disposal receptacle when the haircut is finished. [~~Those establishments that currently have carpeting in the shampoo and work areas are not required to remove said carpeting until such time as it can no longer be maintained in a sanitary condition. In no event shall any establishment maintain carpeting in the shampoo and work areas after December 31, 2001.~~] No carpet shall be permitted except in reception or offices. Walls and fixtures shall be of a sanitary nature. Ceilings must be properly maintained.

(c) - (e) (No change.)

*§83.4. Toilet; Bathrooms.*

(a) (No change.)

(b) Each establishment shall provide hand washing facilities, including hot and cold running water, located near or adjacent to the toilet room or rooms. Hot air blowers or suitable holders for sanitary towels and dispensers for liquid soap shall be provided, and be adequately supplied at all times.

(c) (No change.)

*§83.5. Waste and Refuse.*

(a) - (c) (No change.)

[(d) ~~Cotton pads, disposable towels, or protectors which cannot be disinfected will be disposed of in a waste receptacle immediately after use.~~]

*§83.10. Towels.*

(a) (No change.)

(b) [~~Soiled towels are to be discarded.~~] After a towel has been used once, it shall be deposited in a partially closed receptacle, container, or basket, and shall not be used again until properly laundered and disinfected. For blood spills, refer to §83.25 of this title (relating to Arresting Bleeding).

(c) (No change.)

*§83.13. Implements, Combs, Brushes, and Rollers.*

(a) - (c) (No change.)

[(d) ~~All cosmetology implements and supplies which have become soiled in any manner shall be placed in a properly labeled receptacle provided for that purpose.~~]

(d) [~~(e)~~] Electrical appliances shall be kept clean by wiping the surface with a towel or cotton pad dampened with a hospital grade EPA registered disinfectant solution. The solution must remain on the surface for at least 10 minutes.

(e) [~~(f)~~] Disposable supplies shall be used whenever possible.

*§83.14. Disinfection Practices and Procedures.*

(a) A wet disinfectant soaking container is a container large enough to hold a disinfectant solution in which the objects to be disinfected are immersed. A wet disinfectant soaking container must have a cover to prevent contamination of the solution. The disinfectant solution must be a hospital grade EPA registered disinfectant solution. Before immersing objects in a wet disinfectant soaking container containing a disinfectant solution, all licensees shall:

(1) (No change.)

(2) pre-clean thoroughly with hot water and soap or cleaning [~~disinfectant~~] solution;

(3) place tool and implements in the wet soaking container filled with cleaning [~~disinfectant~~] solution for the required time, [~~completely immerse for 10 minutes,~~] or according to the manufacturer's direction; and

(4) remove tools and implements after the required time [~~10 minutes~~], wipe dry with a clean towel, and store in a dry labeled storage container.

(b) - (j) (No change.)

*§83.17. Prohibited Medical Practices.*

(a) The use of a blade or cutting tool intended for the purpose of removing corns and calluses is prohibited.

(b) No licensee shall remove hair from a mole, or other blemishes, by radiation, laser or other means of tissue destruction.

*§83.23. Personal Hygiene.*

(a) Any licensee whose work causes him or her to touch the skin of any person shall wash his or her hands thoroughly with liquid soap and hot water or a broad spectrum antimicrobial agent before attending a client, servicing hairgoods, and immediately after using the toilet.

(b) (No change.)

*§83.25. Arrest Bleeding.*

(a) - (b) (No change.)

(c) All salons, schools, students, licensees, and independent contractors shall:

(1) - (2) (No change.)

(3) follow disinfecting procedures according to manufacturer's instructions for [~~by complete immersion for 10 minutes of~~] tools or implements that have come in contact with blood or other fluids.

(d) (No change.)

*§83.27. Dispensary and Storage Area.*

Each establishment with dispensary for storage of cosmetology items [~~or storage~~] must at all times have these areas as clean and as sanitary as the remaining sections of the establishment.

*§83.30. Proper Labeling.*

Each cosmetology establishment and independent contractor shall properly label all products used in the conduct of their business in compliance with OSHA. Each cosmetology establishment and independent contractor must maintain a Material Safety Data Sheet on all chemical products used [~~material safety data sheet~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405447
Antoinette Humphrey
Executive Director
Texas Cosmetology Commission
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 380-7644

♦ ♦ ♦

# CHAPTER 89. GENERAL RULES AND REGULATIONS

**22 TAC §89.1**

The Texas Cosmetology Commission proposes amendments to Chapter 89, §89.1, concerning Schedule of Fines. The amendments are to the graphic in subsection (b).

The graphic in subsection (b) specifies the dollar amount of the administrative penalty for a violation.

The graphic is amended as a need to update administrative penalty amounts.

Antoinette Humphrey, Executive Director, Texas Cosmetology Commission, has determined that for the first five year period the amendments are in effect, there will be no anticipated fiscal implications for state or local government as a result of enforcing or administering the amended section.

Ms. Humphrey has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be to better protect public health and safety. There is no anticipated effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Virgil Seals, Texas Cosmetology Commission, P.O. Box 26700, Austin, Texas 78755-0770. Comments may also be submitted

electronically to virgil.seals@txcc.state.tx.us or by fax to (512) 374-1564.

The amendments are proposed under Texas Occupations Code, Chapter 1602, §1602.151, which provides the Commission with the authority to "adopt rules consistent with this chapter", to protect the public's health and safety.

No other statutes, articles or codes are affected by the proposed amendments.

*§89.1. Schedule of fines.*

(a) (No change.)

(b) Schedule of fines: In accordance with Chapter 1602, Title 9, Occupations Code, the commission shall adopt the following fine schedules for the 1st, 2nd and 3rd violation of the following practitioner, facility, and independent contractor licensing rules. For the 4th and subsequent offenses, the provisions of Chapter 1602, Occupations Code, will apply.
Figure: 22 TAC §89.1(b)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405446
Antoinette Humphrey
Executive Director
Texas Cosmetology Commission
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 380-7644

♦ ♦ ♦

# PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

## CHAPTER 131. ORGANIZATION AND ADMINISTRATION

## SUBCHAPTER F. ADMINISTRATION

### 22 TAC §131.81

The Texas Board of Professional Engineers proposes an amendment to §131.81, relating to definitions used in the Board Rules. The proposed amendment provides a definition for NAFTA - North American Free Trade Agreement.

This rule change is part of a board action to further define the requirements for application for licensure using a reciprocity or comity process made available through participation by Texas in the North American Free Trade Agreement.

Lance S. Kinney, P.E., Engineering Specialist for the board, has determined that for the first five-year period the proposed amendment is in effect, there are no fiscal implications for state or local government as a result of enforcing or administering the section as amended. For the same period, there is no anticipated adverse economic effect on small or micro-businesses.

Mr. Kinney has determined that there is no additional cost as this rule only defines the NAFTA term. The public benefit anticipated as a result of enforcing the proposed amendment will be a revised reciprocal licensure process for applicants via NAFTA.

Comments may be submitted, no later than 21 days after the publication of this notice to Lance S. Kinney, P.E., Engineering Specialist, Texas Board of Professional Engineers, 1917 H-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-2934. Comments will be accepted until October 1, 2004.

The amendment is proposed pursuant to the Texas Engineer Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance if its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendment.

*§131.81. Definitions.*

In applying the Texas Engineering Practice Act and the board rules, the following definitions shall prevail unless the word or phrase is defined in the text for a particular usage. Singular and masculine terms shall be construed to include plural and feminine terms and vice versa.

(1) ABET--Accreditation Board for Engineering and Technology

(2) Act--The Texas Engineering Practice Act, Chapter 1001, Texas Occupations Code.

(3) Advisory Opinion--A statement of policy issued by the board that provides guidance to the public and regulated community regarding the board's interpretation and application of Chapter 1001, Texas Occupations Code, referred to as the Texas Engineering Practice Act "Act" and/or board rules and that do not have the force and effect of law.

(4) Agency or Board--Texas Board of Professional Engineers.

(5) Applicant--A person applying for a license to practice professional engineering or a firm applying for a certificate of registration to offer or provide professional engineering services.

(6) Application--The forms, information, and fees necessary to obtain a license as a professional engineer or a certificate of registration for a firm.

(7) Certificate of Registration--The annual certificate issued by the board to a firm offering or providing professional engineering services to the public in Texas.

(8) Complainant--Any party who has filed a complaint with the board against a person or entity subject to the jurisdiction of the board.

(9) Contested case--A proceeding, including but not restricted to rate making and licensing, in which the legal rights, duties, or privileges of a party are to be determined by an agency after an opportunity for adjudicative hearing pursuant to the Administrative Procedure Act, Chapter 2001, Texas Government Code.

(10) Direct supervision--Critical watching, evaluating, and directing of engineering activities with the authority to review, enforce, and control compliance with all engineering design criteria, specifications, and procedures as the work progresses. Direct supervision will consist of an acceptable combination of: exertion of significant control over the engineering work, regular personal presence, reasonable geographic proximity to the location of the performance of the work, and an acceptable employment relationship with the supervised persons. Engineers providing direct supervision of engineering under the Act, §1001.405(f), shall be personally present during such work.

(11) EAC/ABET--Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology

(12) EAOR number--An engineering advisory opinion request file number assigned by the executive director to a pending advisory opinion in accordance with this chapter

(13) Engineering--The profession in which a knowledge of the mathematical, physical, engineering, and natural sciences gained by education, experience, and practice is applied with judgment to develop ways to utilize, economically, the materials and forces of nature for the benefit of mankind.

(14) Firm--Any entity that engages or offers to engage in the practice of professional engineering in this state. This includes sole proprietorships, firms, co-partnerships, corporations, partnerships, or joint stock associations.

(15) Gross negligence--Any willful or knowing conduct, or pattern of conduct, which includes but is not limited to conduct that demonstrates a disregard or indifference to the rights, health, safety, welfare, and property of the public or clients. Gross negligence may result in financial loss, injury or damage to life or property, but such results need not occur for the establishment of such conduct.

(16) Incompetence--An act or omission of malpractice which may include but is not limited to recklessness or excessive errors, omissions or failures in the license holder's record of professional practice; or an act or omission in connection with a disability which includes but is not limited to mental or physical disability or addiction to alcohol or drugs as to endanger health, safety and interest of the public by impairing skill and care in the provision of professional services.

(17) License--The legal authority granting the holder to actively practice engineering upon the payment of the annual renewal fee. Also, a certificate issued by the board showing such authority.

(18) License Holder--Any person whose license to practice engineering is current.

(19) Licensure--The granting of an original certificate and license to an individual.

(20) Misconduct--The violation of any provision of the Texas Engineering Practice Act and board rules. A conviction of a felony or misdemeanor that falls under the provisions of Texas Occupations Code, Chapter 53, will also be misconduct under the Texas Engineering Practice Act.

(21) NAFTA--North American Free Trade Agreement. NAFTA is related to the practice and licensure of engineering through mutual recognition of registered/licensed engineers by jurisdictions of Canada, Texas, and the United Mexican States to facilitate mobility.

(22) [~~(21)~~] NCEES--National Council of Examiners for Engineering and Surveying.

(23) [~~(22)~~] Party--Each person or agency named or admitted as a party to a proceeding under the Administrative Procedure Act.

(24) [~~(23)~~] Person--Any individual, firm, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(25) [~~(24)~~] Petitioner--Any party requesting the adoption of a rule by the Board.

(26) [~~(25)~~] Pleading--Written allegations filed by parties concerning their respective claims.

(27) [~~(26)~~] Professional engineering--Professional service which may include consultation, investigation, evaluation, planning, designing, or direct supervision of construction, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects wherein the public welfare, or the safeguarding of life, health, and property is concerned or involved, when such professional service requires the application of engineering principles and the interpretation of engineering data.

(28) [~~(27)~~] Professional engineering services--Services which must be performed by or under the direct supervision of a licensed engineer and which meet the definition of the practice of engineering as defined in the Act, §1001.003. A service shall be conclusively considered a professional engineering service if it is delineated in that section; other services requiring a professional engineer by contract, or services where the adequate performance of that service requires an engineering education, training, or experience in the application of special knowledge or judgment of the mathematical, physical or engineering sciences to that service shall also be conclusively considered a professional engineering service.

(29) [~~(28)~~] Protestant--Any party opposing an application or petition filed with the Board.

(30) [~~(29)~~] Recognized institution of higher education--an institution of higher education as defined in Section §61.003, Education Code; or in the United States, an institution recognized by one of the six regional accrediting associations, specifically, the New England Association of Schools and Colleges, the North Central Association Commission on Accreditation and School Improvement, the Northwest Association of Schools and Colleges, the Southern Association of Colleges and Schools, the Western Association of Schools and Colleges, or the Middle States Association of Colleges & Schools; or, outside the United States, an institution recognized by the Ministry of Education or the officially recognized government education agency of that country.

(31) [~~(30)~~] Respondent--Any party against whom any complaint has been filed with the Board.

(32) [~~(31)~~] Responsible charge--An earlier term synonymous with the term "direct supervision"; the term is still valid and may be used interchangeably with "direct supervision" when necessary.

(33) [~~(32)~~] Responsible supervision--An earlier term synonymous with the term "direct supervision"; the term is still valid and may be used interchangeably with "direct supervision" when necessary.

(34) [~~(33)~~] TAC/ABET--Technology Accreditation Commission of the Accreditation Board for Engineering and Technology

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405479
Paul Cook
Assistant Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 440-7723

♦ ♦ ♦

## CHAPTER 133. LICENSING
## SUBCHAPTER B. PROFESSIONAL ENGINEER LICENSES

**22 TAC §133.11**

The Texas Board of Professional Engineers proposes an amendment to §133.11, relating to types of licenses issued by the board. The proposed amendment clarifies language concerning reciprocal or comity licenses, temporary licenses, and adds language defining reciprocal or comity licenses issued under mutual recognition through the North American Free Trade Agreement (NAFTA).

This rule change is part of a board action to further define the requirements for application for licensure using a reciprocity or comity process made available through participation by Texas in the North American Free Trade Agreement. This section defines a reciprocal or comity license issued under NAFTA, the type of license it will be, and the basic requirements for licensure using this process. Clarifications are made to differentiate the licensing process for reciprocity with a U.S. state or territory and with Canada or Mexico through NAFTA.

Lance S. Kinney, P.E., Engineering Specialist for the board, has determined that for the first five-year period the proposed amendment is in effect, there are no fiscal implications for state or local government as a result of enforcing or administering the section as amended. For the same period, there is no anticipated adverse economic effect on small or micro-businesses.

Mr. Kinney has determined that there is no additional cost as this rule change will provide for a new type of licensure process that can be accommodated by the current licensure system. The public benefit anticipated as a result of enforcing the proposed amendment will be a revised reciprocal licensure process for applicants via NAFTA.

Comments may be submitted, no later than 21 days after the publication of this notice to Lance S. Kinney, P.E., Engineering Specialist, Texas Board of Professional Engineers, 1917 H-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-2934. Comments will be accepted until October 1, 2004.

The amendment is proposed pursuant to the Texas Engineer Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance if its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and pursuant to the Texas Engineering Practice Act, Occupations Code §1001.310 of the Act, which delegates to the board the authority to set requirements for a Temporary License; and pursuant to the Texas Engineering Practice Act, Occupations Code §1001.311 of the Act, which delegates to the board the authority to waive requirements for licensure for applicants licensed in another jurisdiction.

No other statutes, articles or codes are affected by the proposed amendment.

*§133.11. Types of Licenses.*

The board shall receive, evaluate and process all applications for licensure as a professional engineer received from individuals who assert through the application process that they meet the minimum requirements of §1001.302 of the Act. The board shall deny a license to any applicant found not to have met all requirements of the Act and board rules.

(1) Standard License. Unless requested by the applicant or license holder, all licenses issued by the board shall be considered standard licenses. Standard licenses are fully renewable annually until such time as the board takes specific action to prevent renewal or provision of the Texas Engineering Practice Act prevents renewal.

(2) Reciprocal or Comity License: (U.S. states or territories). Pursuant to §1001.311 of the Act, the board has reviewed the licensing requirements of the jurisdictions listed in this paragraph and has found them to be substantially equivalent to the requirements in Texas. The board shall waive the application requirements of §133.21 for an applicant who is licensed in good standing with at least one of the jurisdictions listed in this paragraph and submits the documentation as required in §133.27(a) [~~(relating to Application for a Reciprocal or Comity License)~~] of this chapter. A reciprocal or comity license issued under this paragraph has full status of and shall be issued as a standard license. The board does not recognize any U.S. state or territory for reciprocity or comity at this time. [~~The board reviewed and approved jurisdictions for a reciprocal or comity license are:~~]

[~~(A) Mexico, and~~]

[~~(B) Provinces and Territories of Canada~~]

(3) Reciprocal or Comity License: (Canada and the United Mexican States through NAFTA). Pursuant to §1001.311 of the Act and the NAFTA Mutual Recognition Agreement, the board has reviewed the licensing requirements of Canada and the United Mexican States and has found them to be substantially equivalent to the requirements in Texas. A reciprocal or comity license issued under this paragraph has full status of and shall be issued as a temporary license. The board may waive the application requirements of §133.21 for applicants who:

(A) are currently licensed in good standing with at least one of the jurisdictions listed in this paragraph;

(B) meet the experience requirements of §133.69(a)(3)(A) or §133.69(a)(3)(B) of this chapter; and

(C) submit the documentation as required in §133.27(b) of this chapter.

(4) [~~(3)~~] Temporary License. [~~If the license holder requests that the license be temporary, the holder's regular license shall be converted to temporary status and may only be renewed twice.~~] A temporary license holder shall be subject to all other rules and legal requirements to which a holder of a standard [~~regular~~] license is subject. A temporary license may only be renewed twice. The executive director shall be authorized to convert a standard [~~regular~~] license to a temporary license at the time the standard [~~regular~~] license is issued provided a request for such has been received.

(5) [~~(4)~~] Provisional. The Board does not issue provisional licenses at this time.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405480
Paul Cook
Assistant Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 440-7723

♦ ♦ ♦

## SUBCHAPTER C. APPLICATION REQUIREMENTS

**22 TAC §133.27**

The Texas Board of Professional Engineers proposes an amendment to §133.27, relating to the process for application for a reciprocal or comity license. The proposed amendment adds language defining the requirements for application for a reciprocal or comity license issued under mutual recognition through the North American Free Trade Agreement (NAFTA).

This rule change is part of a board action to further define the requirements for application for licensure using a reciprocity or comity process made available through participation by Texas in the North American Free Trade Agreement. This section defines the items required to make an application for a reciprocal or comity license via NAFTA. This amendment further defines and expands the requirements to include proof of education, experience, language proficiency, and enforcement history.

Lance S. Kinney, P.E., Engineering Specialist for the board, has determined that for the first five-year period the proposed amendment is in effect, there are no fiscal implications for state or local government as a result of enforcing or administering the section as amended. For the same period, there is no anticipated adverse economic effect on small or micro-businesses.

Mr. Kinney has determined that there is no additional cost as this rule change will provide for a new type of licensure process that can be accommodated by the current licensure system. The public benefit anticipated as a result of enforcing the proposed amendment will be a revised reciprocal licensure process for applicants via NAFTA.

Comments may be submitted, no later than 21 days after the publication of this notice to Lance S. Kinney, P.E., Engineering Specialist, Texas Board of Professional Engineers, 1917 H-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-2934. Comments will be accepted until October 1, 2004.

The amendment is proposed pursuant to the Texas Engineer Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance if its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and pursuant to the Texas Engineering Practice Act, Occupations Code §1001.310 of the Act, which delegates to the board the authority to set requirements for a Temporary License; and pursuant to the Texas Engineering Practice Act, Occupations Code §1001.311 of the Act, which delegates to the board the authority to waive requirements for licensure for applicants licensed in another jurisdiction.

No other statutes, articles or codes are affected by the proposed amendment.

*§133.27. Application for Reciprocal or Comity License.*

(a) The applicant applying for a reciprocal or comity license from a U.S. state or territory shall:

(1) submit a reciprocal or comity application form,

(2) pay the application fee established by the Board,

(3) submit a completed Texas Engineering Professional Conduct and Ethics examination, and

(4) submit a verification of a license in good standing from one of the jurisdictions listed in §133.11(2) of this chapter (relating to Types of Licenses).

(b) The applicant applying for a reciprocal or comity license from Canada or the United Mexican States shall:

(1) submit a NAFTA reciprocal or comity application form;

(2) proof of educational credentials pursuant to §§133.33 or 133.35 (relating to Proof of Educational Qualifications) including:

(A) official transcript(s) of qualifying degree(s), and

(B) commercial evaluation(s) of a non-accredited or non-approved degree(s), as applicable;

(3) supplementary experience record as required under §133.41 (relating to Supplementary Experience Records);

(4) reference statements as required under §133.51(a)(3) and §133.53 of this chapter,

(5) passing scores of TOEFL and TSE as described in §133.21(c) of this chapter;

(6) a statement describing criminal convictions, if any, together with copies of any court orders or other legal documentation concerning the criminal charges and the resolution of those charges;

(7) a statement describing any engineering practice violations, if any, together with documentation from the jurisdictional authority describing the resolution of those charges,

(8) submit a completed Texas Engineering Professional Conduct and Ethics examination,

(9) pay the application fee established by the Board; and

(10) submit a verification of a license in good standing from one of the jurisdictions listed in §133.11(3) of this chapter (relating to Types of Licenses).

(c) [~~(b)~~] Upon receipt of the application and verification of a license in good standing, the board may issue [~~a standard license~~] to the applicant the appropriate license type as described under §133.11 of this chapter, unless the application requires further review under §133.83 of this chapter (relating to Staff Review, Evaluation and Processing of Applications) or §133.85 of this chapter (relating Board Review of and Action on Applications). For those applications requiring further Board review, the Board may request additional information to clarify an application, as needed. Pursuant to §1001.453 of the Act, the Board may review the license holders status and take action if the license was obtained by fraud or error or the license holder may pose a threat to the public's health, safety, or welfare.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405481
Paul Cook
Assistant Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 440-7723

♦ ♦ ♦

## SUBCHAPTER F. REFERENCE DOCUMENTATION

**22 TAC §133.51**

The Texas Board of Professional Engineers proposes an amendment to §133.51, relating to reference requirements for application for a reciprocal or comity license. The proposed amendment adds language defining the requirements for providing experience references for a reciprocal or comity license issued under mutual recognition through the North American Free Trade Agreement (NAFTA).

This rule change is part of a board action to further define the requirements for application for licensure using a reciprocity or comity process made available through participation by Texas in the North American Free Trade Agreement. This section defines requirements for providing references for an application for a reciprocal or comity license via NAFTA. This amendment outlines that an applicant must provide three references that have personal knowledge of the applicant's work experience, character, and suitability for licensure.

Lance S. Kinney, P.E., Engineering Specialist for the board, has determined that for the first five-year period the proposed amendment is in effect, there are no fiscal implications for state or local government as a result of enforcing or administering the section as amended. For the same period, there is no anticipated adverse economic effect on small or micro-businesses.

Mr. Kinney has determined that there is no additional cost as this rule change will provide for a new type of licensure process that can be accommodated by the current licensure system. The public benefit anticipated as a result of enforcing the proposed amendment will be a revised reciprocal licensure process for applicants via NAFTA.

Comments may be submitted, no later than 21 days after the publication of this notice to Lance S. Kinney, P.E., Engineering Specialist, Texas Board of Professional Engineers, 1917 H-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-2934. Comments will be accepted until October 1, 2004.

The amendment is proposed pursuant to the Texas Engineer Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance if its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and pursuant to the Texas Engineering Practice Act, Occupations Code §1001.310 of the Act, which delegates to the board the authority to set requirements for a Temporary License; and pursuant to the Texas Engineering Practice Act, Occupations Code §1001.311 of the Act, which delegates to the board the authority to waive requirements for licensure for applicants licensed in another jurisdiction.

No other statutes, articles or codes are affected by the proposed amendment.

*§133.51. Reference Providers.*

(a) Applicants for licensure shall provide references to verify character suitability for licensure and all engineering experience claimed to meet the minimum years of experience required. Reference statements will be used to verify the applicant's character and the factual presentation of the applicant's experience and to determine to the extent the experience is creditable engineering experience.

(1) Standard Licensure Procedure. Applicants applying under §1001.302(a)(1)(A) or (B) of the Act, including those applicants licensed in another jurisdiction or previously licensed in Texas, shall provide at least three references. These reference providers shall be from currently licensed professional engineers who have personal knowledge of the applicant's character, reputation, suitability for licensure, and engineering experience and shall review all or the applicable portions of the applicant's supplementary experience record and complete the reference statement in full.

(2) Waiver of Examinations Procedure. Applicants requesting a waiver from the examinations on the fundamentals of engineering or principles and practice of engineering shall provide five references . These reference providers shall be from currently licensed professional engineers who have personal knowledge of the applicant's character, reputation, suitability for licensure, and engineering experience and shall review all or the applicable portions of the applicant's supplementary experience record and complete the reference statement in full.

(3) Reciprocal or Comity Licensure Procedure (Canada and the United Mexican States through NAFTA). Applicants applying under §1001.311 of the Act and the NAFTA Mutual Recognition Agreement shall provide at least three references. These reference providers shall be from currently licensed professional engineers who have personal knowledge of the applicant's character, reputation, suitability for licensure, and engineering experience and shall review all or the applicable portions of the applicant's supplementary experience record and complete the reference statement in full.

(b) Professional engineers who have not worked with or directly supervised an applicant may review and judge the applicant's experience and may serve as a licensed engineer reference; such review shall be noted on the reference statement.

(c) All reference providers shall be provided by individuals with personal knowledge of the applicant's character, reputation, and general suitability for holding a license. If possible, reference providers should be provided by individuals who directly supervised the applicants.

(d) Professional engineers who provide reference statements and who are licensed in a jurisdiction other than Texas shall include a copy of their pocket card or other verification to indicate that their license is current and valid.

(e) Professional engineers who provide references shall not be compensated.

(f) References on file with the board from previous applications may be used upon written request of the applicant and with the approval of the executive director.

(g) The board members and staff may, at their discretion, rely on any, all, or none of the references provided in connection with an application for licensure.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405482
Paul Cook
Assistant Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 440-7723

♦ ♦ ♦

**22 TAC §133.53**

The Texas Board of Professional Engineers proposes an amendment to §133.53, relating to requirements for reference statements for application for a reciprocal or comity license. The proposed amendment adds language defining the requirements for providing reference statements for a reciprocal or comity license issued under mutual recognition through the North American Free Trade Agreement (NAFTA).

This rule change is part of a board action to further define the requirements for application for licensure using a reciprocity or comity process made available through participation by Texas in the North American Free Trade Agreement. This section defines requirements for providing reference statements for an application for a reciprocal or comity license via NAFTA. This amendment outlines a process that allows an applicant to provide an affidavit from their home jurisdictional authority in lieu of individual reference statements provided to the board.

Lance S. Kinney, P.E., Engineering Specialist for the board, has determined that for the first five-year period the proposed amendment is in effect, there are no fiscal implications for state or local government as a result of enforcing or administering the section as amended. For the same period, there is no anticipated adverse economic effect on small or micro-businesses.

Mr. Kinney has determined that there is no additional cost as this rule change will provide for a new type of licensure process that can be accommodated by the current licensure system. The public benefit anticipated as a result of enforcing the proposed amendment will be a revised reciprocal licensure process for applicants via NAFTA.

Comments may be submitted, no later than 21 days after the publication of this notice to Lance S. Kinney, P.E., Engineering Specialist, Texas Board of Professional Engineers, 1917 H-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-2934. Comments will be accepted until October 1, 2004.

The amendment is proposed pursuant to the Texas Engineer Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance if its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and pursuant to the Texas Engineering Practice Act, Occupations Code §1001.310 of the Act, which delegates to the board the authority to set requirements for a Temporary License; and pursuant to the Texas Engineering Practice Act, Occupations Code §1001.311 of the Act, which delegates to the board the authority to waive requirements for licensure for applicants licensed in another jurisdiction.

No other statutes, articles or codes are affected by the proposed amendment.

*§133.53. Reference Statements.*

(a) The applicant shall send the board's reference statement form and a complete copy of the applicable portion(s) of the supplementary experience record to each reference.

(b) Persons providing reference statements verifying an applicant's engineering experience shall:

(1) review and evaluate all applicable portions of the supplementary experience record(s); and

(2) accurately complete the reference statement certifying agreement or disagreement with the information written by the applicant.

(c) The reference provider shall submit to the board both the reference statement and the supplemental experience record. If the reference provider is in disagreement with or has comments or clarification to the information provided by the applicant, the reference provider may submit comments or concerns to the board with the completed reference statement.

(d) For any reference statement to meet the requirements of the board, the reference statement must be secured. For a reference statement to be considered secure, the reference provider shall:

(1) place the completed reference statement and reviewed supplementary experience records in an envelope;

(2) seal the flap of the envelope;

(3) after sealing the envelope, the reference provider shall sign across the sealing edge of the flap of the envelope and cover the signature with transparent tape; and

(4) the reference provider shall return the sealed envelope to the applicant or transmit the documents directly to the board.

(e) Secured reference envelopes shall be submitted to the board by applicant or reference provider.

(f) An application for licensure through reciprocity or comity from Canada or The United Mexican States through NAFTA may provide an affidavit from the home jurisdictional authority stating that reference statements have been received, reviewed, and approved by that authority, in lieu of individual reference statements submitted to the Board using the process outlined in subsections (a)-(e) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405483
Paul Cook
Assistant Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 440-7723

♦ ♦ ♦

## SUBCHAPTER H. REVIEW PROCESS OF APPLICATIONS AND LICENSE ISSUANCE

### 22 TAC §133.81

The Texas Board of Professional Engineers proposes an amendment to §133.81, relating to requirements for receipt and process of an application for licensure. The proposed amendment clarifies language to include issuance of a license to applicants meeting the requirements for licensure through the reciprocal or comity process. The proposed amendment also adds language to include a procedure to amend an application if the applicant is eligible for licensure through reciprocity or comity.

This rule change is part of a board action to further define the requirements for application for licensure using a reciprocity or comity process made available through participation by Texas in the North American Free Trade Agreement (NAFTA). This section clarifies that a license may be issued to applicants that have met the requirements for licensure through the reciprocal or comity process.

The current rule concerning the receipt and process of applications states that once an application has been received and approved, the Board will not accept a new or amended application. With the adoption of rules concerning comity applications (§133.11(2)), the proposed amendment is necessary to allow applicants that have applied under standard application rules and have been approved to take the Principles and Practice Examination, but have not taken and failed the examination, and are found to be eligible for reciprocity or comity to amend their application.

Elsewhere in this issue of the *Texas Register*, the Texas Board of Professional Engineers withdraws the amendment to §133.81(c) (published in the July 16, 2004, issue of the *Texas Register* (29 TexReg 6875)). Both sets of amendments are incorporated in this proposal.

Lance S. Kinney, P.E., Engineering Specialist for the board, has determined that for the first five-year period the proposed amendment is in effect, there are no fiscal implications for state or local government as a result of enforcing or administering the section as amended. For the same period, there is no anticipated adverse economic effect on small or micro-businesses.

Mr. Kinney has determined that there is no additional cost as this rule change will provide for a new type of licensure process that can be accommodated by the current licensure system. The public benefit anticipated as a result of enforcing the proposed amendment will be a revised reciprocal licensure process for applicants via NAFTA.

Comments may be submitted, no later than 21 days after the publication of this notice to Lance S. Kinney, P.E., Engineering Specialist, Texas Board of Professional Engineers, 1917 H-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-2934. Comments will be accepted until October 1, 2004.

The amendment is proposed pursuant to the Texas Engineer Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance if its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and pursuant to the Texas Engineering Practice Act, Occupations Code §1001.310 of the Act, which delegates to the board the authority to set requirements for a Temporary License; and pursuant to the Texas Engineering Practice Act, Occupations Code §1001.311 of the Act, which delegates to the board the authority to waive requirements for licensure for applicants licensed in another jurisdiction.

No other statutes, articles or codes are affected by the proposed amendment.

*§133.81. Receipt and Process.*

(a) Upon receipt of applications at the board office in Austin, Texas, the board shall initiate a review of the credentials submitted. Applicants who meet the licensure requirements shall be issued a license upon successful passage of the examination on the principles and practices of engineering, having met all examination requirements, or been approved by waiver of examination(s) , or having been approved for licensure through reciprocity or comity. Applicants who fail to meet one or more of the licensure requirements shall be denied a license.

(b) Once an application is received by the board, no refunds will be granted. By submitting an application and fee, the applicant attests that he or she has reviewed the education, experience, reference, and examination requirements for licensure as prescribed in this chapter and that he or she is qualified for a license based on these requirements.

(c) Once an application has been reviewed and the board has approved an applicant for licensure subject to passage of an examination, and before a license has been issued or denied, the board will not accept a new or amended application from the applicant unless the applicant is found to be eligible for licensure under §133.11(2) of this chapter (relating to Types of Licenses) and has not taken and failed the PE Exam . If the applicant is found to be eligible for licensure via reciprocity or comity under §133.11(2) of this chapter an application may be amended to meet the requirements of §133.27 of this chapter (relating to Application for Reciprocal or Comity License). This does not prohibit the executive director, a board member, or the board from requesting, when they deem necessary, additional information from an applicant regarding his or her application.

(d) In the event that information bearing on the suitability of an applicant is discovered after submission of an application but prior to issuance of a license, the board may rescind or alter any previous decision, or hold the application in abeyance, or may deny an application until the suitability of the applicant is adequately established.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405484
Paul Cook
Assistant Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 440-7723

♦ ♦ ♦

# CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

## SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

### 22 TAC §137.7

The Texas Board of Professional Engineers proposes an amendment to §137.7, relating to the renewal of temporary licenses. The proposed amendment adds language to limit the number of times a temporary license may be renewed.

This rule change is part of a board action to further define the requirements for application for licensure using a reciprocity or comity process made available through participation by Texas in the North American Free Trade Agreement (NAFTA). This section clarifies that a temporary license may be renewed a total of two times for a total duration of three years, after which the license holder may apply for a new license.

Lance S. Kinney, P.E., Engineering Specialist for the board, has determined that for the first five-year period the proposed amendment is in effect, there are no fiscal implications for state or local government as a result of enforcing or administering the section as amended. For the same period, there is no anticipated adverse economic effect on small or micro-businesses.

Mr. Kinney has determined that there is no additional cost as this rule change will provide for a new type of licensure process that can be accommodated by the current licensure system. The public benefit anticipated as a result of enforcing the proposed amendment will be a revised reciprocal licensure process for applicants via NAFTA.

Comments may be submitted, no later than 21 days after the publication of this notice to Lance S. Kinney, P.E., Engineering Specialist, Texas Board of Professional Engineers, 1917 H-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-2934. Comments will be accepted until October 1, 2004.

The amendment is proposed pursuant to the Texas Engineer Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance if its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and pursuant to the Texas Engineering Practice Act, Occupations Code §1001.310 of the Act, which delegates to the board the authority to set requirements for a Temporary License; and pursuant to the Texas Engineering Practice Act, Occupations Code §1001.311 of the Act, which delegates to the board the authority to waive requirements for licensure for applicants licensed in another jurisdiction.

No other statutes, articles or codes are affected by the proposed amendment.

*§137.7. License Expiration and Renewal.*

(a) Pursuant to §1001.352 of the Act, the license holder must renew the license annually to continue to practice engineering under the provisions of the Act. If the license renewal requirements are not met by the expiration date of the license, the license shall expire and the license holder may not engage in engineering activities that require a license until the renewal requirements have been met.

(b) Pursuant to §1001.352 of the Act, the board will mail a renewal notice to the last recorded address of each license holder at least 30 days prior to the date a person's license is to expire. Regardless of whether the renewal notice is received, the license holder has the sole responsibility to pay the required renewal fee together with any applicable increase in fees or late fees at the time of payment.

(c) A license holder may renew a license by submitting the required annual renewal fee, including applicable increase in fees as required by §1001.206 of the Act, and the continuing education program documentation as required in §137.17 of this chapter (relating to Continuing Education Program) to the board prior to the expiration date of the license. Payment may be made by personal, company, or other checks drawn on a United States bank (money order or cashier's check) payable in United States currency.

(d) Pursuant to authority in §1001.205(b) and §1001.206(c) of the Act, the board has established the renewal fee for the following categories of licenses to not require the increase in professional fees:

(1) a license holder who is 65 years of age or older,

(2) a license holder who is disabled with a mental or physical impairment that substantially limits the ability of the person to earn a living as an engineer excluding an impairment caused by an addiction to the use of alcohol, illegal drugs, or controlled substance;

(3) a license holder who meets the exemption from licensure requirement of §1001.057 or §1001.058 of the Act but does not claim that exemption;

(4) a license holder who is not practicing engineering and has claimed inactive status with the board in accordance with the requirements of §137.13 of this chapter (relating to Inactive Status).

(e) Licenses will expire according to the following schedule.

(1) Licenses originally approved in the first quarter of a calendar year will expire on December 31.

(2) Licenses originally approved in the second quarter of a calendar year will expire on March 31.

(3) Licenses originally approved in the third quarter of a calendar year will expire on June 30.

(4) Licenses originally approved in the fourth quarter of a calendar year will expire on September 30.

(f) A temporary license may only be renewed twice for a total duration of three years, after which the former license holder may apply for new license as provided in the current Act and applicable Board rules.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405485
Paul Cook
Assistant Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 440-7723

♦ ♦ ♦

# PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

## CHAPTER 187. PROCEDURAL RULES

The Texas State Board of Medical Examiners proposes amendments to §§187.1, 187.2, 187.4, 187.6-187.9, 187.11-187.14, 187.16-187.20, 187.23-187.27, 187.29, 187.31-187.34, 187.36-187.37, 187.39, 187.43, 187.55, 187.56, 187.58, 187.59, 187.61 and new §187.5 and §187.28, concerning General Provisions and Definitions, Informal Board Proceedings, Formal Board Proceedings at SOAH, Formal Board Proceedings, Proceedings Relating to Probationers and Temporary Suspension Proceedings.

The amendments and new rules are necessary for general rule cleanup.

Elsewhere in this issue of the *Texas Register*, the Texas State Board of Medical Examiners proposes the rule review of chapter 187.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the rules are in effect there will be no fiscal implications to state or local government as a result of enforcing the rules as proposed. There will be no effect to individuals required to comply with the sections as proposed.

Ms. Shackelford also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be updated rules. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Colleen Klein, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

## SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

### 22 TAC §§187.1, 187.2, 187.4 - 187.9

The amendments and new rule are proposed under the authority of the Occupations Code Annotated, §§164.001-164.011; 164.051-164.061; 164.101-164.103; 164.151-164.154; 164.201-164.204; 165.001-165.008; 165.051; 165.101-165.103; 165.151-165.160 which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by this proposal.

*§187.1. Purpose and Scope.*

(a) Purpose. The purpose of this chapter is to provide a system of procedures for practice before the Texas State Board of Medical Examiners and to govern the formal disposition of contested cases at SOAH, as required by Section 164.007(a) of the Act, that will promote just and efficient disposition of proceedings and public participation in the decision-making process. The provisions of this chapter shall be given a fair and impartial construction to obtain these objectives.

(b) Scope.

(1) This chapter shall govern the initiation, conduct, and determination of proceedings required or permitted by law, including proceedings referred to SOAH.

(2) This chapter shall not be construed so as to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers or authority of the board, board staff, or the substantive rights of any person.

(3) This chapter shall control the practice and procedure of all board proceedings to include SOAH proceedings [~~unless preempted by SOAH rules or the APA~~].

*§187.2. Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--Tex. Occ. Code Ann. Title 3 Subtitle B, for physicians; Tex. Occ. Code Ann. Chapter 204 for physician assistants; Tex. Occ. Code Ann. Chapter 205 for acupuncturists; and Tex. Occ. Code Ann. Chapter 206 for surgical assistants.

(2) Address of record--The last mailing address of each licensee or applicant, as provided to the agency pursuant to the Act.

(3) Administrative law judge (ALJ)--An individual appointed to preside over administrative hearings pursuant to the APA.

(4) Agency--The divisions, departments, and employees of the Texas State Board of Medical Examiners, the Texas State Board of Physician Assistant Examiners, and the Texas State Board of Acupuncture Examiners.

(5) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001 as amended.

(6) Applicant--A person seeking a license from the board.

(7) Attorney of record--A person licensed to practice law in Texas who has provided staff with written notice of representation.

(8) Authorized representative--A person who has been designated in writing by a party to represent the party at a board proceeding or an attorney of record. [~~An attorney of record or any other person who has been designated in writing by a party to represent the party at a board proceeding.~~]

(9) Board--The Texas State Board of Medical Examiners for physicians and surgical assistants, the Texas State Board of Acupuncture Examiners for acupuncturists, and the Texas State Board of Physician Assistant Examiners for physician assistants.

(10) Board member--One of the members of the board appointed pursuant to the Act.

(11) Board proceeding--Any proceeding before the board or at which the board is a party to an action, including a hearing before SOAH.

(12) Board representative--a board member or district review committee member who sits on a panel at an informal proceeding.

(13) Complaint--Pleading filed at SOAH by the board alleging a violation of the Act, board rules, or board order. The word "complaint" is also used in this rule in the context of complaints made to the board as provided in Section 153.012 of the Act.

(14) Contested case--A proceeding, including but not restricted to licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for an administrative hearing to be held at SOAH.

(15) Default Order [~~judgment~~]--A board order in which the factual allegations against a party are deemed admitted as true upon the party's failure to file a timely answer to a Complaint or to appear at a properly noticed SOAH hearing. [~~The issuance of a proposal for decision or board order in which the factual allegations against a party are deemed admitted as true upon the party's failure to appear at a properly noticed SOAH hearing or ISC.~~]

[~~(16) Default Order--A board order in which the factual allegations against a party are deemed admitted as true upon the party's failure to file a timely answer to a Complaint or to appear at a properly noticed SOAH hearing.~~]

[~~(17) Documents--Applications, petitions, complaints, motions, protests, replies, exceptions, answers, notices, or other written instruments filed with the board in a board proceeding.~~]

(16) [~~(18)~~] Executive director--The executive director of the agency, the authorized designee of the executive director, or the secretary of the board if and whenever the executive director and authorized designee are unavailable.

(17) [~~(19)~~] Formal board proceeding--any proceeding requiring action by the board, including a temporary suspension hearing.

(18) [~~(20)~~] Group practice--Any business entity, including a partnership, professional association, or corporation, organized under Texas law and established for the purpose of practicing medicine in which two or more physicians licensed in Texas are members of the practice.

(19) [~~(21)~~] Informal board proceeding--Any proceeding involving matters before the board prior to the filing of a pleading at SOAH, to include, but not limited to show compliance proceedings, eligibility determinations, and informal resolutions [~~resolution conferences~~].

(20) [~~(22)~~] Informal show compliance proceeding (ISC)--a board proceeding that provides a licensee the opportunity to demonstrate compliance with all requirements of the Act and board rules

[either in writing as set out in §187.17 of this title (relating to Informal Show Compliance Proceeding Based on Written Information) or through a personal appearance with one or more representatives of the board as set out in §187.18 of this title (relating to Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance ("ISC"))] and an opportunity to enter into an agreed [informal] settlement.

[(23) ISC--Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance.]

(21) [(24)] License--Includes the whole or part of any board permit, certificate, approval, registration or similar form of permission authorized by law.

(22) [(25)] Licensee--Any person to whom the agency has issued a license, permit, certificate, approval, registration or similar form of permission authorized by law.

(23) [(26)] Licensing--The agency process relating to the granting, denial, renewal, [revocation,] cancellation, [suspension,] limitation, [reinstatement] or reissuance of a license.

[(27) National Practitioner Data Bank (NPDB) reportable action--In accordance with the Health Care Quality Improvement Act, 42 U.S.C. §11132, a public board action subject to reporting to the NPDB, includes a revocation, suspension, restriction or limitation of a physician's license or public reprimand. An administrative penalty or a requirement that a physician obtain additional education or training are not considered reportable actions for the purpose of reporting to the NPDB, however, all disciplinary actions are public as set out in the Act.]

(24) [(28)] Party--The board and each person named or admitted as a party in a SOAH hearing or contested case before the board.

(25) [(29)] Person--Any individual, partnership, corporation, association, governmental subdivision, or public or private organization.

(26) [(30)] Petition--Pleading filed at SOAH by the board alleging the reasons for the denial of a license.

(27) [(31)] Pleading--A written document that [submitted by the board, which] requests procedural or substantive relief, makes claims, alleges facts, makes legal arguments, or otherwise addresses matters involved in a board proceeding.

(28) [(32)] Presiding officer--The president of the board or the duly qualified successor of the president or other person presiding over a board proceeding.

(29) [(33)] Probationer--A licensee who is under a board order.

(30) [(34)] Probationer show compliance proceeding--A board proceeding that provides a probationer the opportunity to demonstrate compliance with the Act, board rules, and board order prior to the board finding that a probationer is in noncompliance with the probationer's order.

(31) [(35)] Register--The Texas Register.

(32) Rehabilitation Order--An agreed order entered pursuant to the authority of Section 164.201 of the Act.

(33) [(36)] Respondent--A [in a contested case, the] licensee or applicant who [either formally contests or defaults on an action rendered in a board proceeding] is the subject of disciplinary, non-disciplinary, or rehabilitative action by the board.

(34) [(37)] Rule--Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of this board. The term includes the amendment or repeal of a prior section but does not include statements concerning only the internal management or organization of the [any] agency and not affecting private rights or procedures. This definition includes substantive regulations.

(35) [(38)] Secretary--The secretary treasurer of the board.

(36) [(39)] SOAH--The State Office of Administrative Hearings.

(37) [(40)] SOAH hearing--A public adjudication proceeding at SOAH.

(38) [(41)] SOAH rules--1 Texas Administrative Code §155.1 et. seq.

(39) [(42)] Texas Public Information Act--Texas Government Code, Chapter 552.

(40) [(43)] Witness--Any person offering testimony or evidence at a board proceeding [who is not board staff, the respondent, or an authorized representative of the respondent].

*§187.4. Agreement to be in Writing.*

No stipulation or agreement between the parties, with regard to any matter involved in any board proceeding shall be enforced unless it shall have been reduced to writing and agreed to [signed] by the parties or their authorized representatives, or unless it shall have been dictated into the record by them during the course of a SOAH hearing or a deposition, or incorporated in a motion [an order] bearing their written approval. This section does not limit a party's ability to waive, modify or stipulate any right or privilege [afforded by these sections, unless precluded by law].

*§187.5. National Practitioner Data Bank (NPDB).*

In accordance with the Health Care Quality Improvement Act, 42 U.S.C. §11132, the board will report a public disciplinary board action subject to reporting to the NPDB, including a revocation, suspension, restriction or limitation of a physician's license or public reprimand. The board will not report an action that includes only an administrative penalty, a requirement that a physician obtain additional education, training, or testing, a requirement that a physician's practice be retrospectively monitored (chart monitoring); and/or a requirement that a physician perform community service. All disciplinary actions are public as set out in the Act.

*§187.6. Appearances Personally or by Representative.*

(a) An individual may appear in person [on his or her own behalf] or by an authorized representative. This right may be waived.

(b) Any authorized representative, other than an attorney of record, [person appearing as the authorized representative of an individual] must produce a written statement executed by the individual they are representing which grants the representative the authority to appear on behalf of the individual. The original or a notarized copy of the authorization must be provided to the board at least three days prior to the appearance of the authorized representative in a proceeding [or SOAH hearing] unless waived by the board.

(c) A corporation, partnership, or association may appear and be represented by any authorized representative.

*§187.7. Conduct and Decorum.*

Each person, witness, or other representative shall behave in a dignified, courteous, and respectful manner with the board, the executive

director, board staff, and all other parties at board proceedings. Disorderly or disruptive conduct will not be tolerated. Attorneys and other authorized representatives shall observe and practice the standards of ethical behavior prescribed for attorneys by the State Bar of Texas.

*§187.8. Subpoenas.*

(a) Investigative Subpoenas [~~Authority~~]. Pursuant to the Act, §153.007, the board has the authority to issue subpoenas to compel the attendance of witnesses and to issue subpoenas duces tecum to compel the production of books, records, or documents on the board's own motion. The pendency of a SOAH proceeding does not preclude the board from issuing an investigative subpoena at any time.

(b) SOAH Subpoenas [~~Request~~]. Subsequent to the filing of a formal Complaint [~~complaint~~], any party may request in writing that the executive director[~~, as defined in §187.2 of this title (relating to Definitions),~~] issue a subpoena or subpoena duces tecum in accordance with §2001.089 of the APA [~~and §153.007 of the Act,~~] upon a showing of good cause.

(1) The party requesting the subpoena shall be responsible for the payment of any expense incurred in serving the subpoena, as well as reasonable and necessary expenses incurred by the witness who appears in response to the subpoena.

(2) If the subpoena is for the attendance of a witness, the written request shall contain the name, address, and title, if any, of the witness and the date and location at which the attendance of the witness is sought.

(3) If the subpoena is for the production of books, records, writings, or other tangible items, the written request shall contain a description of the item sought; the name, address, and title, if any, of the person or entity who has custody or control over the items and the date; and the location at which the items are sought to be produced.

(4) The party requesting a subpoena duces tecum shall describe and recite with [~~great~~] clarity, specificity, and particularity the books, records, documents to be produced.

(c) Service and expenses.

(1) A subpoena issued at the request of the board's staff may be served either by a board investigator or by certified mail in accordance with the Act §153.007. The board shall pay reasonable charges for photocopies produced in response to a subpoena requested by the board's staff, but such charges may not exceed those billed by the board for producing copies of its own records.

(2) A subpoena issued at the request of any party other than the board shall be addressed to a sheriff or constable for service in accordance with the APA §2001.089.

(d) Fees and travel. A witness called at the request of the board shall be paid a compensation fee as set by agency policy and reimbursed for travel in like manner as board employees. An expert witness called at the request of the board shall be paid a compensation fee as set by agency policy and reimbursed for travel in like manner as board members.

(e) Additional reasons for granting a subpoena. Notwithstanding any other provisions of this section, the executive director[~~, as defined in §187.2 of this title (relating to Definitions),~~] may issue a subpoena if, in the opinion of the executive director, such a subpoena is necessary to preserve evidence and testimony regarding [~~to investigate~~] any potential violation or lack of compliance with the Act, the rules and regulations or orders of the board.

*§187.9. Board Actions.*

(a) Pursuant to the Act, §164.001, and in accordance with Chapter 190 of this title (relating to Disciplinary Guidelines), the board, upon finding that an applicant or licensee has committed a prohibited act under the Act or board rules, or has violated an order of the board, shall enter an order imposing any action authorized by law. [~~one or more of the following actions:~~]

[~~(1) deny the person's license application or other authorization to practice medicine;~~]

[~~(2) administer a public reprimand;~~]

[~~(3) revoke, suspend, limit or restrict a person's license or other authorization to practice medicine;~~]

[~~(4) require the person to submit to care, counseling or treatment by a health care practitioner designated by the board;~~]

[~~(5) require the person to participate in an evaluation, educational or counseling program;~~]

[~~(6) require the person to practice under the direction of a physician for a specified period of time;~~]

[~~(7) require the person to perform public service;~~]

[~~(8) require the person to participate in continuing education programs;~~]

[~~(9) require the person to be monitored for a specific period of time with or without restrictions on the person's practice of medicine; or~~]

[~~(10) assess an administrative penalty against the person.~~]

(b) The board may stay enforcement of any order and place the person on probation. The board shall retain the right to vacate the probationary stay and enforce the original order for noncompliance with the terms of the probation or to impose any other disciplinary action authorized by law [~~as provided in subsection (a) of this section~~] in addition to or instead of enforcing the original order.

(c) An agreed order, including a [~~A~~] private nondisciplinary rehabilitation order, may impose [~~one or more of the above board actions or such other~~] actions as agreed to by the board and person subject to the order.

(d) The time period of an order shall be extended for any period of time in which a person subject to an order subsequently resides or practices outside the State of Texas or for any period during which the person's license is subsequently cancelled for nonpayment of licensure fees.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405487
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 305-7016

♦ ♦ ♦

## SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS

**22 TAC §§187.11 - 187.14, 187.16 - 187.20**

The amendments are proposed under the authority of the Occupations Code Annotated, §§164.001-164.011; 164.051-164.061; 164.101-164.103; 164.151-164.154; 164.201-164.204; 165.001-165.008; 165.051; 165.101-165.103; 165.151-165.160 which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by this proposal.

*§187.11. Transfer to Legal Division [~~Litigation~~].*

Upon [~~an initial~~] determination by board staff that there is evidence [~~an applicant is ineligible for licensure or~~] that a licensee has [~~allegedly~~] violated the Act, board rules, or order of the board, the matter and the ongoing investigation shall [~~either be retained by the licensure division or~~] be referred to the agency's legal division [~~litigation section~~] for the scheduling of an ISC [~~informal proceeding~~].

*§187.12. Notice.*

Prior to the institution of any disciplinary action against a licensee, other than a temporary suspension or restriction, the [~~The applicant or~~] licensee shall be provided with [~~given~~] notice of the allegations and facts supporting the allegations that the board staff reasonably believes could be proven by competent evidence at a hearing. The notice shall include notice of an opportunity to attend and participate at an informal board proceeding. The notice shall be delivered by hand delivery, regular mail, certified mail - return receipt requested, overnight or express mail, or registered mail to the address of record. The notice shall include the basis for denial or ineligibility or the alleged violations and a description of the process for informal board proceedings. [~~Within the written notice, the applicant or licensee shall be adequately informed that failure to respond to the allegations either in writing or by personal appearance may result in default judgment.~~]

*§187.13. Informal Board Proceedings Relating to Licensure Eligibility.*

(a) Recommendations by the Executive Director.

(1) The executive director shall review applications for licensure and may determine whether an applicant is eligible for licensure or refer an application to a committee of the board for review. If an applicant is determined to be ineligible for a license by the executive director pursuant to §§155.001-155.152 of the Act, Chapter 163 of this title (relating to Licensure), or Chapter 171 of this title (relating to Postgraduate Training Permits), the applicant may request review of that determination by a committee of the board. The applicant must request the review not later than the 20th day after the date the applicant receives notice of the determination.

(2) To promote the expeditious resolution of any licensure matter, the executive director with the approval of the board, may recommend that an applicant be eligible for a license, but only under certain terms and conditions and present a proposed agreed order to the applicant.

(A) If the proposed agreed order is acceptable to the applicant, the applicant shall sign the order and the order shall be presented to the board for consideration and acceptance without conducting an informal board proceeding relating to licensure eligibility.

(B) If the proposed agreed order is not acceptable to the applicant, the applicant may request review of the executive director's recommendation by a committee of the board. The applicant must request review not later than the 20th day after the date the applicant receives notice of the executive director's recommendation.

(b) Determination by a Committee of the Board. Upon review of an application for licensure, a committee of the board may determine that the applicant is ineligible for licensure or is eligible for licensure with or without restrictions, or defer its decision pending further information.

(1) Licensure with Restrictions.

(A) If the committee determines that the applicant should be granted a license with restrictions based on the applicant's commission of a prohibited act or failure to demonstrate compliance with provisions under the Act or board rules, the committee, as the board's representatives, shall propose an agreed order. The terms and conditions of the proposed agreed order shall be submitted to the board for approval. The agreed order shall be considered nondisciplinary.

(B) Upon an affirmative majority vote of members present, the board may approve the agreed order with or without modifications, and direct staff to present the order to the applicant.

*(i)* If the applicant agrees to the terms of the proposed agreed order, the applicant may be licensed [~~effective date of the order shall be~~] upon the signing of the order by the applicant and the president of the board or the president's designee, and passage of the medical jurisprudence examination, if applicable.

*(ii)* If the applicant does not agree to the terms of the proposed agreed order, the applicant is considered ineligible for licensure.

(C) If the board does not approve the proposed agreed order and by majority vote determines the applicant ineligible for licensure, the applicant shall be so informed [~~and the matter shall be referred to board staff for appropriate action that may include further investigation or an additional appearance by the applicant before a committee of the board~~]. The board must specify their rationale for the rejection of the proposed agreed order that shall be referenced in the minutes of the board.

(2) Ineligibility Determination.

(A) If a committee of the board or the full board determines that an applicant is ineligible for licensure, the applicant shall be notified of the committee's determination and given the option of appealing the determination to SOAH or withdrawing the [~~his or her~~] application. An applicant has 20 days from the date the applicant receives notice of the committee's determination to make the request.

(B) If the applicant timely requests a SOAH hearing, the matter shall be referred to the agency's legal division [~~board staff~~].

(C) If the applicant does not timely request a SOAH hearing or withdrawal of application, the committee's determination shall be submitted to the full board and shall become administratively final at the next scheduled board meeting.

(D) If an applicant is determined ineligible for licensure, the applicant may request a rehearing of the [~~his/her~~] application before a committee of the board. The request must be made within 20 days receipt of notice of the committee's initial determination of ineligibility. It is at the discretion of the committee whether to grant a rehearing. The request for rehearing must be based on information not previously presented to or considered by the board.

*§187.14. Informal Resolution of Disciplinary Issues Against a Licensee.*

Pursuant to §§164.003 -.004 of the Act and §§2001.054-.056 of the APA, the following rules shall apply to informal resolution:

(1) Any matter within the board's jurisdiction may be resolved informally by agreed order, [~~administrative penalty,~~] dismissal, or default.

(2) Prior to the imposition of any disciplinary action against a licensee, the licensee shall be given the opportunity to show compliance with all the requirements of the law for the retention of an unrestricted license before one or more board representatives.

(3) If a determination is made by the board representatives that there has been no violation, the board representatives may recommend that the complaint or allegations be dismissed.

(4) If a determination is made by the board representatives that a licensee has violated the Act, board rules, or board order, the board representatives may make recommendations for resolution of the issues to be reduced to writing and processed in accordance with §187.19 of this title (relating to Resolution by Agreed Order).

(5) An opportunity for the licensee to show compliance shall not be required prior to a temporary suspension under §164.059 of the Act, or in accordance with the terms of an agreement between the board and a licensee.

(6) Any modification made by the board to any agreed order must be approved by the licensee.

*§187.16. Informal Show Compliance Proceedings (ISCs).*

(a) Notice of the time, date and place of the ISC shall be extended to the licensee and the complainant(s) in writing, by hand delivery, regular mail, certified mail - return receipt requested, overnight or express mail, courier service, or registered mail, to the address of record of the complainants and the address of record of the licensee or the licensee's authorized representative to be sent by the Board at least thirty days prior to the date of the ISC. The notice will also provide the licensee with the rules governing the proceeding; the deadline for submitting any additional material for presentation to the board representatives; and a brief written statement of the nature of the allegations to be addressed at the ISC.

[~~(a) Prior to the institution of any disciplinary action against a licensee, the licensee shall be provided with notice of the allegations and the facts that the board staff reasonably believes could be proven by competent evidence at a hearing, and~~]

(b) A licensee may be asked to respond in writing to questions from the board staff concerning the matter. If the licensee is asked to respond to written questions, the licensee shall respond within 14 days after the notice is mailed. The licensee's response may include any additional information the licensee wants the board representatives to consider.

(c) [~~(b)~~] All information provided by the board staff and the licensee shall be provided to the board representatives for review prior to the board representatives making a determination of whether the licensee has violated the Act, board rules, or board order.

(d) [~~(c)~~] Upon receiving the notice of allegations, the licensee must submit written notification to the board within 14 days of the mailing, indicating whether the licensee has chosen to waive an opportunity to show compliance, have a determination of compliance be made based upon the written information submitted to the board representatives as set out in §187.17 of this title (relating to Informal Show Compliance Proceeding Based on Written Information), or attend an ISC as set out in §187.18 of this title (relating to Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance [~~("ISC")~~]). The board shall assume that if a licensee fails to provide any written response that the licensee has elected to personally appear at an ISC.

(e) [~~(d)~~] Notwithstanding any other provision of this section, the board representatives may request that a licensee personally appear at an ISC.

(f) [~~(e)~~] All informal show compliance proceedings shall be scheduled not later than the 180th day after the date the complaint is filed with the board, unless good cause is shown by the board for scheduling the informal meeting after that date.

*§187.17. Informal Show Compliance Proceeding Based on Written Information.*

(a) A licensee may request in writing that a determination of show compliance be made based on the written information provided by the licensee and board staff for review by the board representatives.

(b) One or more board representatives shall review the written information and deliberate in person or by telephone in order to make recommendations for the disposition of the complaint and/or allegations.

(c) Board staff and Hearings Counsel [~~counsel~~] of the board shall be available for assistance to the board representatives.

(d) If a determination is made by the board representatives that there has been no violation, the board representatives may recommend that the complaint or allegations be dismissed.

(e) If a determination is made by the board representatives that the licensee has violated the Act, board rules, or board order, the board representatives may propose resolution of the issues to the licensee that shall be reduced to writing and processed in accordance with §187.19 of this title (relating to Resolution by Agreed Order).

*§187.18. Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance [~~("ISC")~~].*

(a) Upon referral of an investigation to the agency's legal division, the Hearings Coordinator of the board shall schedule an ISC with one or more board representatives to be held after proper notice to the licensee.

[~~(a) Notice of the time, date and place of the ISC shall be extended to the licensee and the complainant(s) in writing, by hand delivery, regular mail, certified mail - return receipt requested, overnight or express mail, courier service, or registered mail, to the address of record of the complainants and the address of record of the licensee or the licensee's authorized representative to be sent by the Board at least thirty days prior to the date of the ISC. The notice shall also provide the licensee with the rules governing the proceeding; the deadline for submitting any additional material for presentation to the board representatives; and a brief written statement of the nature of the allegations to be addressed at the ISC. If the licensee has previously been the subject of disciplinary action by the board, the licensee shall be sent proscribed notice at least ten days prior to the date of the ISC.~~]

[~~(b) Unless a timely written request from the licensee for an informal show compliance proceeding based on written information is received, the licensee shall be scheduled to appear in person for an ISC with one or more board representatives.~~]

(b) [~~(c)~~] Requests to reschedule the ISC may be granted only if the licensee is able to show that extraordinary circumstances exist, such as illness, death or natural disaster, which suggest the need to reschedule the ISC. The licensee must submit a written request within five days of receipt of the notice that includes the reasons for the requested continuance. The Hearings Counsel to the board shall make the determination as to whether to grant a request to reschedule.

(c) [~~(d)~~] Prior to the ISC, the board representatives shall be provided with the information sent to the licensee by the board staff

and all information timely received in response from the licensee. [~~If no information has been received from the licensee that shall be reported to the board representatives.~~]

(d) [~~(c)~~] The ISC shall allow:

(1) the board staff to present a synopsis of the allegations and the facts that the board staff reasonably believes could be proven by competent evidence at a hearing;

(2) the licensee to reply to the board staff's presentation and present facts the licensee reasonably believes could be proven by competent evidence at a hearing;

(3) presentation of evidence by the board staff and the licensee, which may include medical and office records, x rays, pictures, film recordings of all kinds, audio and video recordings, diagrams, charts, drawings, and any other illustrative or explanatory materials which in the discretion of the board representatives are relevant to the proceeding;

(4) representation of the licensee by an authorized representative;

(5) presentation of oral or written statements by the licensee or authorized representative;

(6) presentation of oral or written statements or testimony by witnesses;

(7) questioning of the witnesses in a manner prescribed by the panel;

(8) questioning of the licensee;

(9) rebuttal by board staff; and

(10) upon request by board representatives, the board staff may propose appropriate disciplinary action and the licensee or authorized representative may respond.

(e) [~~(f)~~] The board representatives, board staff, the licensee, and the licensee's authorized representative shall be present during the presentation of statements and testimony during the ISC.

(f) [~~(g)~~] Notwithstanding subsection (e) [~~(f)~~] of this section, the board representatives may allow a witness to testify outside the physical presence of the licensee to protect the person from harassment and/or undue embarrassment, for personal safety concerns, or for any other demonstrated and legitimate need. If such testimony is allowed, arrangements will be made to allow the licensee to listen to the testimony contemporaneously as it is given.

(g) [~~(h)~~] All evidence that a licensee wishes the board representatives to consider at the ISC must be submitted to the board at least seven days before the ISC. The board representatives may refuse to consider any evidence not submitted in a timely manner. If the board representatives allow the licensee to submit late evidence, the representatives may reschedule and/or assess an administrative penalty for the late submission.

(h) [~~(i)~~] The Hearings Counsel of the board [~~A board attorney shall be designated as Counsel to the panel and~~] shall be present during the ISC [~~hearing and deliberations by the panel and shall advise the panel on all legal issues that arise during the hearing including objections to evidence and other evidentiary matters. The Counsel to the Panel~~]. The Hearings Counsel shall be permitted to ask questions of witnesses, the board staff, the attorney for the licensee and other participants in the hearing.

(i) [~~(j)~~] At the ISC, the board representatives shall attempt to resolve disputed matters and the representatives may call upon the board staff at any time for assistance in conducting the ISC.

(j) [~~(k)~~] The board representatives shall prohibit or limit access to the board's investigative file by the licensee, the licensee's authorized representative, the complainant(s), witnesses, and the public consistent with Act, §164.007.

(k) [~~(l)~~] Although the participants may make notes, mechanical or electronic recordings shall not be made of the ISC, settlement discussions, or mediation efforts.

(l) [~~(m)~~] The ISC shall be informal and shall not follow the procedures established under this title for formal board proceedings.

(m) [~~(n)~~] At the conclusion of the presentations, the board representatives shall deliberate in order to make recommendations for the disposition of the complaint or allegations. During the deliberations by the board representatives, the board representatives shall exclude, except with agreement of the licensee, the board staff who presented the allegations and facts related to the complaint against the licensee, the licensee, the licensee's authorized representative, the complainant(s), witnesses, and the general public. The Hearings Counsel of the board shall be available for assistance during deliberations.

(n) [~~(o)~~] The board representatives may make recommendations to dismiss the complaint or allegations.

(o) The dismissal of any matter is without prejudice to additional investigation and/or reconsideration of the matter at any time.

(p) Upon a determination by the board representatives that the licensee has violated the Act or board rules, the board representatives may propose resolution of the issues to the licensee to be reduced to writing and processed in accordance with §187.19 of this title (relating to Resolution by Agreed Order).

*§187.19. Resolution by Agreed Order.*

(a) If the board representatives determine that the licensee has violated the Act, board rules, or board order, the board representatives may recommend board action and terms and conditions for informal resolution.

(b) The recommendation of the board representatives shall be reduced to writing in an agreed order prepared by board staff and presented to the licensee and the authorized representative.

(c) The licensee may accept the proposed settlement by signing and returning the agreed order within the time period prescribed. If the licensee rejects or fails to timely accept the proposed agreement, board staff may proceed with the filing of a Complaint [~~complaint~~] at SOAH.

(d) Additional negotiations may be held between board staff and the licensee or the authorized representative. In consultation with the board representatives, as available, the recommendations of the board representatives may be subsequently modified based on new information, a change of circumstances, or to expedite a resolution in the interest of protecting the public.

(e) At the discretion of board staff [~~and the chief of litigation~~], a licensee may be invited to participate in negotiations [~~an informal resolution conference for the purpose of allowing further negotiation~~]. One or both of the board representatives from the informal show compliance proceeding, or a board member if no such board representative is available, may participate in the negotiations, [~~conference~~] either in person or by telephone.

(f) The board representative(s) shall be consulted and must concur with any subsequent substantive modifications before any recommendations are sent to the full board for approval.

(g) The recommendations may be adopted, modified, or rejected by the board.

(h) Board staff may communicate directly with the board representative(s) after the ISC for the purpose of discussing settlement of the case.

*§187.20. Board Action.*

(a) Following the acceptance and execution by the licensee or applicant of the settlement agreement, the agreement shall be submitted to the board for approval.

(b) The following relate to the consideration of an agreed disposition by the board:

(1) Upon an affirmative majority vote of members present to approve an agreed order, [~~the board shall enter an order approving the proposed settlement agreement. The order shall bear the signature of~~] the president of the board or of the officer presiding at such meeting shall sign and enter the agreed order and the action shall be referenced in the minutes of the board.

(2) If the board does not approve a proposed settlement agreement, the licensee or applicant shall be so informed and the matter shall be referred to board staff for appropriate action that may include dismissal, closure, further negotiation, further investigation, an additional informal resolution conference or a SOAH hearing. The board must specify their rationale for the rejection of the proposed settlement agreement that shall be referenced in the minutes of the board.

(3) The board may approve the proposed agreed order with specified modifications, which shall be referenced in the minutes of the board. The revised proposed agreed order shall be presented to the licensee for acceptance within the time period prescribed. Upon acceptance, the president of the board or the officer presiding at the meeting shall sign and enter the agreed order.

(c) To promote the expeditious resolution of any complaint or matter relating to the Act or of any contested case, with the approval of the executive director or a member of the Executive Committee or the Disciplinary Process Review Committee, board staff may present a proposed settlement agreement for licensees to the board for consideration and acceptance without conducting an informal show compliance proceeding.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405488
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 305-7016

♦ ♦ ♦

## SUBCHAPTER C. FORMAL BOARD PROCEEDINGS AT SOAH

**22 TAC §§187.23 - 187.29, 187.31 - 187.34**

The amendments and new rule are proposed under the authority of the Occupations Code Annotated, §§164.001-164.011; 164.051-164.061; 164.101-164.103; 164.151-164.154; 164.201-164.204; 165.001-165.008; 165.051; 165.101-165.103; 165.151-165.160 which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by this proposal.

*§187.23. General Provisions.*

(a) SOAH hearings of contested cases shall be conducted in accordance with the APA by an ALJ assigned by SOAH. Jurisdiction over the case is acquired by SOAH when board staff files a Request to Docket Case form accompanied by legible copies of all pertinent documents, including but not limited to the Complaint, Petition [~~complaint, petition~~] or other document describing the board action giving rise to the contested case.

(b) The ALJ has the authority under SOAH rules, Chapter 155, to issue orders, to regulate the conduct of the proceeding, rule on motions, establish deadlines, clarify the scope of the proceeding, schedule and conduct prehearing and posthearing conferences for any purpose related to any matter in the case, set out additional requirements for participation in the case, and take any other steps conducive to a fair and efficient process in the contested case, including referral of the case to a mediated settlement conference or other appropriate alternative dispute resolution procedure as provided by Chapter 2003 [~~2008~~] of the Government Code.

(c) Any person may file a motion to be admitted as a party upon showing of a justiciable interest.

(d) All documents are to be filed at SOAH only after it acquires jurisdiction. Copies of all documents filed at SOAH shall be contemporaneously filed with the Hearings Coordinator of the board [~~sent to board staff~~].

(e) Because of the often voluminous nature of the records properly received into evidence by the ALJ, the party introducing such documentary evidence should paginate each exhibit and/or flag pertinent pages in each exhibit in order to expedite the hearing and the decision-making process.

(f) Board staff may file an interlocutory or interim appeal to the board of an ALJ's ruling excluding evidence offered by board staff, or of any procedural ruling that staff believes is substantially prejudicial to the board. The board's determination on these matters shall be controlling.

(g) Board staff may certify to the board any question concerning the following:

(1) procedural or evidentiary issues;

(2) the imposition of any sanction;

(3) evidentiary or procedural ruling by an ALJ that would be substantially prejudicial to the board;

(4) policy issues including, but not limited to:

(A) the board's interpretation of its rules and applicable statutes;

(B) which rules or statutes are applicable to a proceeding; and

(C) whether board policy should be established or clarified as to a substantive or procedural issue of significance of the proceeding;

(5) any other matter which is committed to the discretion or judgment of the board.

(h) Final argument by the parties, whether written or oral, shall proceed by allowing the party with the burden of proof to open and conclude. In disciplinary matters, board staff will make argument, the respondent/licensee will be permitted to make a reply argument, and board staff will be permitted to make rebuttal argument in that order. In licensure matters, the respondent/applicant shall make argument, the board staff shall be permitted to make reply argument, and the respondent/applicant shall be permitted rebuttal argument, in that order.

(i) Within the time line set out in SOAH rules, after the conclusion of the hearing, the ALJ shall prepare and serve on the parties a proposal for decision that includes the ALJ's findings of fact and conclusions of law.

(j) After receiving the ALJ's findings of fact and conclusions of law, the board shall rule on the merits of the charges and enter an order.

*§187.24. Pleadings.*

(a) In disciplinary matters, actions by the board as Petitioner [~~petitioner~~] against a licensee, the board's pleadings shall be styled "[~~SOAH~~] Complaint" or "Formal Complaint". Except in cases of temporary suspension, a Complaint [~~complaint~~] shall be filed only after notice of the facts or conduct alleged to warrant the intended action has been sent to the licensee's address of record and the licensee has an opportunity to show compliance with the law for the retention of a license as provided in §2001.054 of the APA, and §164.004(a) of the Act.

(b) In nondisciplinary matters, actions by the board as petitioner to enforce and regulate matters regarding licensure eligibility, the board's pleadings shall be styled "Petition of the Board of Medical Examiners".

*§187.25. Notice of [~~Formal~~] Adjudicative Hearing [~~Proceedings~~].*

(a) Notice. Before revoking or suspending any license, denying an application for a license, or reprimanding any licensee, the board will afford all parties an opportunity for an adjudicative hearing after reasonable notice of not less than ten days, except as otherwise provided by board rule or the Act.

(b) Content.

(1) In accordance with §2001.052 of the APA, notice of adjudicative hearing shall include:

(A) a statement of time, place, and nature of the hearing;

(B) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(C) a reference to the particular sections of the statutes and rules involved;

(D) a short and plain statement of the matters asserted; and.

(2) [~~(E)~~] In addition, the Notice of Adjudicatory Hearing shall include a notice that failure to answer or appear may result in a default [~~judgment as specified in §187.27 of this title (relating to Default Judgments).~~] order. The notice shall include the following language in at least 10-point bold type: "If you do not file a written answer to this notice with the State Office of Administrative Hearings within 20 days after the date this Notice of Adjudicative Hearing was mailed, a default order may be entered against you, which may include the denial of licensure or any or all of the requested sanctions, including the revocation of your license. If you file a written answer, but then fail to attend the hearing, a default order may be entered against you, which may include the denial of licensure or any or all of the requested sanctions, including the revocation of your license. A copy of any response you file with the State Office of Administrative Hearings shall also be provided to the hearings coordinator of the Texas State Board of Medical Examiners."

(3) [~~(2)~~] A copy of the original pleading filed with the board may be substituted for subsection (b)(1) and (b)(2) [~~, subparagraphs (B) (E)~~] of this section to the extent that [~~if~~] it contains the [~~all~~] required information.

(c) Service. The notice of adjudicative hearing shall be served as specified in §187.26 of this title (relating to Service in SOAH Proceedings).

*§187.26. Service in SOAH Proceedings.*

(a) Service of a notice of adjudicative hearing and Complaint [~~complaint~~] shall be made by hand delivery, regular, registered or certified mail, courier service, or otherwise in accordance with the APA and the Rules of SOAH. The notice shall be delivered to the respondent at the address of record on file with the board. A certificate of service indicating service in the manner provided for in this subsection shall be prima facie evidence of proper service of notice of adjudicative hearing.

(1) Service by hand delivery shall be complete upon hand delivery to the respondent or respondent's agent at the respondent's address of record.

(2) Service by mail shall be complete upon deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service.

(3) Service by courier service shall be complete upon deposit of the paper, enclosed in a properly addressed wrapper, in a depository under the care and custody of a courier service, with payment under a contract with the board.

(b) [~~Service by publication.~~] If service of notice as prescribed by subsection (a) of this section is impossible or cannot be accomplished, then notice may be made through publication of a notice of hearing once a week for two successive weeks in a newspaper published in the county of the last known place of practice of the person entitled to notice if the county is known. If the person is not currently practicing in Texas as evidenced by information in the agency files, or if the last county of practice is unknown, publication shall be in a newspaper in Travis County. When publication of notice is used, the date of hearing may not be less than ten days after the date of the last required publication of notice. Proof of publication may be accomplished by affidavit of a representative or record custodian of the publisher indicating the required publication or by introduction and admission into evidence of copies of the required notices published for purposes of service.

(c) Service of documents in contested cases pending before SOAH shall be governed by the rules of SOAH.

*§187.27. Written Answers in SOAH Proceedings and Default Orders.*

(a) Written Answers in SOAH Proceedings.

(1) Within 20 days after the date that service of a notice of adjudicative proceeding and Complaint [~~complaint~~] is complete, as provided in §187.26 of this title (related to Service in SOAH Proceedings), the respondent shall file a written answer with the State Office

of Administrative Hearings and with the Hearings Coordinator of the board.

(2) The written answer shall specifically admit or deny each factual and legal allegation made against the respondent. As to any allegation, the answer may admit in part and deny in part, clearly stating the parts that are admitted and the parts that are denied. Any unreasonable denial of any allegation or part of an allegation shall constitute unprofessional and dishonorable conduct and shall be considered as an aggravating factor if a violation of the Act is found.

[~~(3) The notice of hearing shall include the following language in at least 10-point bold type: If you do not file a written answer to this notice with the State Office of Administrative Hearings within 20 days of the date notice of service was mailed, a default judgment may be entered against you, which may include the denial of licensure or any or all of the requested sanctions including the revocation of your license. If you file a written answer, but then fail to attend the hearing, a default judgment may be entered against you, which may include the denial of licensure or any or all of the requested sanctions including the revocation of your license. A copy of any response you file with the State Office of Administrative Hearings shall also be provided to the hearings coordinator of the Texas State Board of Medical Examiners.~~]

(3) [~~(4)~~] Upon the filing of a Notice of Adjudicative Hearing, [~~notice of adjudicatory hearing,~~] the Hearings Coordinator for the board shall calculate the date that a written answer must be filed.

(b) Default Orders.

(1) Upon the filing of a written answer or upon the expiration of the time that a written answer must be filed, the Hearings Coordinator shall present the administrative record of the case to the Hearings Counsel for the board, including the Complaint [~~complaint~~], the notice of adjudicative hearing, and the written answer, if any. The Hearings Counsel shall determine whether the notice was properly served and whether the written answer reasonably complies with subsection (a)(2) of this section.

(2) In the event the Hearings Counsel determines that the notice of adjudicative hearing was properly served and that respondent has failed to timely file a written answer, as required by subsections (a)(1) and (a)(2) of this section, the Hearings Counsel shall issue a Determination of Default, which shall be served on respondent and filed at SOAH. The Determination of Default shall specifically state the facts on which the Hearings Counsel has based the Determination of Default, request that the matter be abated or continued at SOAH pending informal disposition by the board, and summarize the requirements by which a Determination of Default or Default Order may be set aside, as provided in paragraphs (6) and (7) [~~paragraph (6)~~] of this subsection.

(3) The failure to file an answer that reasonably complies with subsection (a)(2) of this section shall be considered the failure to timely file a written answer.

(4) An answer received after a Determination of Default has been issued shall not be filed. [~~The board shall consider the complaint and at a meeting of the board not less than twenty days after the date of the Determination of Default. If the board concurs with the findings in the Determination of Default, the board may deem the allegations in the Complaint as true and enter a Default Order.~~]

(5) [~~An answer received after a Determination of Default has been issued shall not be filed.~~]

[~~(6)~~] In the event that the respondent wishes to file an answer after a Determination of Default has been issued, but before a Default Order has been adopted by the board, the respondent must file a Motion to Set Aside the Determination of Default, which shall show the board that:

(A) the failure to timely file a written answer was not intentional or the result of conscious indifference but was due to a mistake or accident;

(B) respondent has a meritorious defense;

(C) the setting aside of the Determination of Default will not cause any delay or injury to the board; and

(D) respondent is prepared to file an answer that fully complies with subsection (a)(2) of this section if the board sets aside the Determination of Default.

(6) The board shall consider the Complaint, the Determination of Default, and any Motion to Set Aside the Determination of Default, at a meeting of the board not less than twenty days after the date of the Determination of Default. If the board concurs with the findings in the Determination of Default, the board may deem the allegations in the Complaint as true and enter a Default Order.

(7) In the event that the respondent wishes to file an answer after a Default Order has been entered by the board, but before the time for filing a Motion for Rehearing has expired, the respondent must file a Motion for Rehearing to Set Aside Default Order, which shall show that:

(A) the failure to timely file a written answer was caused by fraud, accident, or wrongful act or official mistake of the board;

(B) the failure to timely file a written answer was not the result of respondent's fault or negligence;

(C) the respondent has a meritorious defense; and

(D) respondent is prepared to file an answer that fully complies with subsection (a)(2) of this section if the board grants the Motion for Rehearing. The Motion for Rehearing shall be supported by affidavits and documentary evidence that present a prima facie case for a meritorious defense.

*§187.28. Discovery.*

(a) Parties to SOAH proceedings shall have reasonable opportunity and methods of discovery as described in the APA, §164.005 of the Act, board rules, SOAH's rules and where specifically provided, the Texas Rules of Civil Procedure. Matters subject to discovery are limited to those that are relevant and material to, or reasonably calculated to lead to the discovery of, issues within the board's authority as set out in the Act. The forms of discovery shall include:

(1) Request for Disclosure. Not later than 20 days after receiving a written request from an opposing party, the responding party shall provide to the requesting party the information required by Rule 194.2, Tex. Rules of Civil Procedure. In addition, a Request for Disclosure may request the following:

(A) a preliminary list of the names and last known addresses and phone numbers of potential witnesses which the responding party reasonably anticipates may testify in its case-in-chief;

(B) a list or copy of all documents, records, photographs, moving pictures, films, videotapes, audio recordings, and other such material in the possession of the responding party which the responding party intends to offer in its case-in-chief, and a reasonable opportunity to inspect and copy such items;

(C) a list identifying all tangible items in the possession of the responding party which the responding party intends to offer in its case-in-chief, and a reasonable opportunity to inspect such items;

(D) the designation of any experts the responding party may call to testify in its case-in-chief. A party must designate all expert witnesses within 20 days of receipt of written request, unless otherwise determined by the ALJ upon motion by movant for good cause, and in no event less than 30 days prior to the date of hearing;

(E) documents and tangible items that have been made or prepared by any expert used for consultation, if such documents and tangible items form the basis, either in whole or in part, of the opinion of an expert who is expected to testify in the case; and

(2) Request for Admissions and Genuineness of Documents as permitted by the rules of SOAH. "Genuineness" means that the documents are truly what they purport to be and are not false, fictitious, forged, spurious or counterfeit.

(3) Interrogatories as permitted by the rules of SOAH, which must be sworn to in accordance with Texas Rules of Civil Procedure 197.2.

(4) Requests for Production as permitted by the rules of SOAH.

(5) Depositions.

(A) The taking and use of depositions shall be governed by APA or by an agreement between the parties either on the record or in writing. Except by an agreement between the parties either on the record or in writing, depositions shall be conducted and completed no later than 19 days prior to the scheduled hearing date. Failure of a properly noticed witness who is a party to the case to attend a deposition for the purpose of taking the testimony of that party witness, or the failure of such a witness to attend such a deposition as agreed to by the parties on the record or in writing, may result in the imposition of the sanctions and remedies set forth in subsection (c) of this section.

(B) A true copy of a transcript of a deposition taken in the case shall be admitted into evidence upon offer by any party. Such a copy shall be presumed to be authentic unless an objecting party is able to rebut such a presumption by a preponderance of competent evidence.

(6) Deposition on Written Questions as provided for in the Texas Rules of Civil Procedure.

(7) Other forms of discovery as provided for in the APA and by the rules of SOAH.

(b) Documents and tangible items that are identified in a discovery response but not provided, shall be made available for inspection and copying at a reasonable time and place upon the written request of an opposing party.

(c) Remedies and Sanctions. Upon the failure to comply with a discovery request to the extent required by board rule, the Act, SOAH Rules, or SOAH Order, or as agreed to between the parties in a discovery agreement, the presiding ALJ should, after notice and hearing, make such orders in regard to the failure as are just, and such orders may include one or more of the following:

(1) an order granting a continuance;

(2) an order limiting or restricting the admissibility and use of evidence, to include exclusion of evidence or testimony;

(3) an order for payment by a party of the actual travel, lodging, discovery expenses; hearing and court reporter costs; but not attorney fees, incurred by an opposing party as a result of the failure to comply with the discovery requirements;

(4) an order imposing a scheduling order providing for discovery deadlines necessary to remedy the failure to comply with discovery requirements;

(5) an order for remedies and sanctions agreed to by the parties in writing or on the record;

(6) an order disallowing further discovery of any kind or of a particular kind by the offending party;

(7) an order holding that designated facts be considered admitted for purposes of the proceeding;

(8) an order refusing to allow the offending party to support or oppose a designated claim or defense or prohibiting the party from introducing designated matters into evidence;

(9) an order disallowing in whole or in part requests for relief by the offending party and excluding evidence in support of those requests; or

(10) an order striking pleadings or testimony, or both, in whole or in part.

(d) Good Cause. Showing of good cause for failure to comply with a discovery request to the extent required by law, board rule, or as agreed to between the parties in a discovery agreement, may justify the imposition of less severe remedies or sanctions which might otherwise be imposed. Good cause shall include but is not limited to the following:

(1) lack of knowledge of the existence of the information or material;

(2) lack of access to or control of the information or material; and

(3) act of nature.

(e) Calculation of Deadlines and Time Limits. Discovery requests promulgated less than seven days prior to the scheduled hearing date shall not require a response unless agreed to by the parties on the record or in writing; however, other discovery requests promulgated at a time prior to the scheduled hearing date which by their timing allow less than the applicable deadline period for a response, shall not require a response until submitted for approval by motion of the requesting party to the ALJ and approved in whole or in part by order of the ALJ. Any such approval shall provide for one or more of the following:

(1) modified response deadlines;

(2) a continuance of the hearing date charged to the party requesting discovery; or

(3) such reasonable requirements which are necessary to minimize any anticipated burden or inconvenience to the responding party as a result of the lateness of the discovery request.

(f) Discovery Agreements. Discovery requirements governing SOAH proceedings may be modified by agreement of the parties either on the record or in writing without approval of an ALJ.

(g) Official Notice. No later than three days prior to the date of the hearing, the parties shall exchange lists specifying all matters which each party will seek to have officially noticed at the hearing.

(h) Final Witness List. No later than 10 days prior to the date of the hearing, the parties shall exchange final lists identifying the names and last known addresses and phone numbers of all witnesses each party intends to call to testify in its case-in-chief.

(i) Waiver of Privilege/Confidentiality. The provision of any information or material in response to a discovery request that may be the subject of a privilege or confidentiality requirement under the Act or other applicable law, including but not limited to the physician/patient privilege, mental health provider privilege, and the physician peer review process, shall not constitute a waiver of any such privilege or

confidentiality requirement with respect to other such information or material not provided.

(j) Supplementation. Upon receiving new information or material, or upon otherwise determining that an inaccuracy exists in a previous discovery response, each party shall supplement such responses as soon as practicable.

*§187.29. Mediated Settlement Conferences*

(a) In an effort to expeditiously resolve outstanding Complaints [~~complaints~~], mediation of Complaints or Petitions [~~complaints or petitions~~] may be held through SOAH in compliance with §155.37 of SOAH rules. For any such proceeding:

(1) SOAH will provide a minimum of 30 days notice of any mediated settlement conference (MSC). In no event shall the MSC be held later than 30 days before the scheduled hearing unless agreed to by the parties.

(2) To the extent possible any MSC should be held soon after the Complaint or Petition [~~complaint or petition~~] is filed and before extensive discovery is initiated. If a party opposes a MSC, SOAH shall consider whether the request for the MSC was timely made.

(3) Any ordered MSC will not stay discovery unless agreed to by the parties.

(4) Board members and District Review Committee (DRC) members are not parties to actions pending before SOAH, and accordingly will not be ordered or expected to attend MSCs before SOAH. Board members and DRC members who attended the informal show compliance proceeding or Licensure Committee hearing will be invited by board staff to attend the MSC. If the board and DRC members who attended the informal show compliance proceeding, or the Licensure Committee members are unable to attend the MSC, then other members of the board and DRC may be invited to attend the MSC. In appropriate cases, board staff will make every effort to have a physician-member present.

(5) All proposed mediated agreed orders are not considered final until they are approved by the board.

(6) All mediated agreed orders shall be in writing and shall contain findings of facts, conclusions of law and board actions consistent with §187.9 of this title (relating to Board Actions).

(b) The costs of mediation shall be born equally by the parties, unless proof through affidavit and other reliable records such as tax returns show that a party is incapable of paying part of the costs of mediation.

*§187.31. Evidence.*

(a) Rules. The rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed, except that evidence inadmissible under those rules may be admitted if it meets the standards set out in the APA §2001.081, as discussed in this section. In all cases, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The ALJ shall give effect to the rules of privilege recognized by law. Opportunity must be afforded all parties to respond and present evidence and argument of all issues involved.

(b) Objections. Objections to evidentiary offers shall be made and shall be noted in the record. Formal exceptions to rulings of the ALJ during a hearing shall be unnecessary. It shall be sufficient that the party at the time any ruling is made or sought shall have made known to the ALJ the action which he or she desires.

(c) Offer of proof. If evidence is excluded from the record by an exclusionary ruling of the ALJ the evidence may be included in the record by an offer of proof in accordance with the Rules of Evidence [~~by the sponsoring party by dictating into the record or submitting in writing the substance of the evidence~~]. An offer of proof shall be sufficient to preserve the evidence for review.

(d) Physician's office records. When subpoenaed by the board, unless stipulated by the parties, the office records of each patient shall have stapled thereto an affidavit in the form approved and furnished by the board that [~~which~~] contains the requisite elements to comply with the Texas Rules of Evidence, 902 (10)(b), relating to form of affidavits.

(e) Peer review proceedings.

(1) Pursuant to Section 160.006 of the Act, a record, report, or other information that has been submitted to the board in accordance with Chapter 160 of the Act by a medical peer review committee, professional review body or any health care entity may be disclosed by Board Staff and shall be admitted into evidence for all purposes in a disciplinary hearing before the board or at SOAH. The authorization to disclose such records in a disciplinary hearing, provided in Section 160.006(a)(1), creates a statutory exception to the hearsay rule, as stated in Article VIII, Texas Rules of Evidence. Furthermore, such peer review records should be excepted from the hearsay rule in accordance with Rule 803(1), (6), and (8), Texas Rules of Evidence.

(2) In accordance with §§160.009 of the Act, parties and witnesses can be required to produce documents and testify in a hearing or a deposition regarding medical peer review proceedings otherwise privileged pursuant to §160.007 of the Act.

(f) Deferred adjudications. In accordance with §2001.081 of the APA and consistent with §§164.053(a)(1) and 164.053(b) of the Act, deferred adjudications are admissible as evidence that the respondent violated the law with which the respondent was charged and pled to, which gave rise to the deferred adjudication.

(g) Documents. Subject to these requirements, if a hearing will be expedited and the interests of the parties will not be substantially prejudiced, any part of the evidence may be received in written form.

(1) Copies. Documentary evidence may be received in the form of copies or excerpts [~~if the original is not readily available~~]. On request, parties shall be given an opportunity to compare the copy with the original. [~~When numerous documents are offered, the ALJ may limit those admitted to a number which are typical and representative and may, in his or her discretion, require the abstracting of the relevant data from the documents and the presentation of the abstracts in the form of an exhibit; provided, however, that before making such requirement the ALJ shall require that all parties of record or their representatives be given the right to examine the documents from which such abstracts were made.~~]

(2) [~~Prepared testimony. In all contested proceedings, prepared testimony of a witness upon direct examination, either in narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness's being sworn and identifying the same. Such~~] Statement of Standard of Care. In lieu of pre-filed testimony in contested proceedings in which the quality or standard of medical care is at issue, the ALJ may require the parties to file a Statement of Standard of Care for each expert witness who will testify in the party's case-in-chief. The Statement shall set forth the expert's opinion regarding:

(A) any standard of care that applies to the current case, and

(B) how the standard of care applies and/or was violated in the current case. The expert witness shall be subject to direct and cross-examination and the [~~prepared testimony shall be subject to a motion to strike in whole or in part. A party may not be required over objection to submit written testimony. The board relies upon physicians who receive minimal compensation to act as consultants to~~] Statement shall be [~~the board and provide testimony as needed at SOAH hearings. Requiring the board's consultants to spend additional time to reduce their testimony to writing would dissuade and deter physicians from continuing to volunteer to act as board consultants and experts. Accordingly, it is not in the interest of the board and would be substantially prejudicial to the board to require testimony to be reduced to writing~~] admissible into evidence.

*§187.32. Motions.*

Any motion filed during the pendency of a formal administrative hearing shall be filed with SOAH [~~and~~] in accordance with its rules and with the Hearings Coordinator of the board.

*§187.33. Proposals for Decision.*

(a) Elements. In addition to any other requirement of the Act or the APA, the ALJ shall serve on the parties a proposal for decision that shall contain:

(1) a summary of the evidence adduced by each party;

(2) a statement of the ALJ's reasons for the proposed decision;

(3) findings of fact based on the evidence and on matters officially noticed;

(4) conclusions of law necessary to the proposed decision;

(5) a listing and explanation of all mitigating and aggravating circumstances necessary to a complete understanding of the case by the board; and

(6) a finding whether the board is authorized by the Act to take disciplinary action against the respondent.

(b) Service. When a proposal for decision is prepared, a copy of the proposal shall be served forthwith by the ALJ on each party, his or her attorney of record or representative, and the board. Service of the proposal for decision shall be in accordance with §187.26 of this title (relating to Service in SOAH Proceedings).

(c) Statutory statement. If findings of fact are stated in statutory language, each finding must be accompanied by a concise and explicit statement of the facts supporting the finding.

(d) Proposed findings. If a party [~~the board's staff~~] submits proposed findings of fact, the ALJ shall rule on each proposed finding, including a statement as to why any proposed finding was not included in the proposal for decision.

*§187.34. Exceptions and Replies.*

(a) Entitlement. In accordance with §155.59 of SOAH's Rules, any [~~Any~~] party of record who is aggrieved by the ALJ's proposal for decision shall have the opportunity to file exceptions to the proposal for decision within 15 [~~20~~] days from the date of service of the proposal for decision. Replies to the exceptions may be filed by other parties within 15 [~~ten~~] days of the filing of the exceptions. Exceptions and replies shall be filed with SOAH and with the Hearings Coordinator of the board [~~ALJ~~]. Any extensions of time shall be as provided by §187.3 of this title (relating to Computation of Time).

(b) Form. The form of exceptions and replies are to be done in accordance with SOAH rules.

(c) Content. Each exception or reply to a finding of fact shall be concisely stated and summarize the evidence in support thereof. Arguments shall be logical and citations to authorities shall be complete.

(d) Briefs. Briefs shall be filed only when requested or permitted by the board, the board's presiding officer, or the ALJ.

(e) Service. Exceptions and replies shall be served upon every party of record by the filing party pursuant to §187.26 of this title (relating to Service in SOAH Proceedings).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405489
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 305-7016

♦ ♦ ♦

## SUBCHAPTER D. FORMAL BOARD PROCEEDINGS

### 22 TAC §§187.36, 187.37, 187.39

The amendments are proposed under the authority of the Occupations Code Annotated, §§164.001-164.011; 164.051-164.061; 164.101-164.103; 164.151-164.154; 164.201-164.204; 165.001-165.008; 165.051; 165.101-165.103; 165.151-165.160 which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by this proposal.

*§187.36. Interlocutory Appeals and Certification of Questions.*

(a) Interlocutory appeals and certification of questions. Interlocutory appeals to the board and certification of questions filed pursuant to §187.23 of this title (relating to General Provisions of Formal Proceedings at SOAH) shall be filed with the hearings coordinator of the board and served on the respondent or authorized representative and the ALJ. The respondent or authorized representative and the ALJ shall be given ten days from the date of filing by board staff to file a written response with the Hearings Coordinator [~~hearings coordinator~~]. The board, at its discretion, may invite the staff member who filed the appeal or certified question, the ALJ, the respondent and authorized representative to appear at a meeting to make oral argument on the appeal or certified question.

(b) Abatement of proceeding. The ALJ shall abate the proceeding while a certified question or interlocutory appeal is pending.

(c) Board action. The board shall issue a written decision on the certified question or interlocutory appeal at the board meeting at which the certified question or interlocutory appeal is heard. A board decision on a certified question or interlocutory appeal is not subject to motion for rehearing.

(d) Judicial review. Nothing in this section shall be interpreted to affect a licensee's right to seek judicial review of any disciplinary

action taken by the board against the licensee as provided by §164.009 of the Act.

*§187.37. Final Decisions and Orders.*

(a) Board action. A [~~On written request, a~~] copy of the final decision or order shall be delivered or mailed to any party and to the attorney of record.

(b) Recorded. All final decisions and orders of the board shall be in writing and shall be signed by the president, vice-president, or secretary and reported in the minutes of the meeting. A final order shall include findings of fact and conclusions of law, separately stated.

(c) Imminent peril. If the board finds that imminent peril to the public's health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as a prerequisite for appeal.

(d) Changes to Recommendation. In that the board has been created by the legislature to protect the public interest as an independent agency of the executive branch of the government of the State of Texas so as to remain as the primary means of licensing, regulating and disciplining physicians and surgeons, to protect the public interest and ensure that sound medical principles govern the decisions of the board, it shall hereafter be the policy of the board to change a finding of fact or conclusion of law or to vacate or modify any proposed order of an ALJ when the board determines that the proposed order [~~is~~]:

(1) fails to properly apply or interpret applicable law, board rules, written policies, or prior administrative decisions;

(2) is not supported by substantial evidence;

[~~(1) erroneous;~~]

[~~(2) against the weight of the evidence;~~]

(3) is based on unsound medical principles; or

(4) includes the ALJ's recommendation for the appropriate sanction in a finding of fact or conclusion of law. [~~based on an insufficient review of the evidence;~~]

[~~(5) not sufficient to protect the public interest; or~~]

[~~(6) not sufficient to adequately allow rehabilitation of the physician.~~]

(e) Changes to proposed order. If the board modifies, amends, or changes the ALJ's proposed findings of fact or conclusions of law [~~recommended order~~], an order shall be prepared reflecting the board's changes, the board's justification(s) for the changes, and recorded in the minutes of the meeting.

(f) Administrative finality. A final order or board decision is administratively final:

(1) upon a finding of imminent peril to the public's health, safety or welfare, as outlined in subsection (c) of this section;

(2) when no [~~absent the filing of a timely~~] motion for rehearing has been filed within 20 days after [~~upon the expiration of 20 days from~~] the date the final order or board decision is entered; or

(3) when a timely motion for rehearing is filed and the motion for rehearing is denied by board order or operation of law as outlined in §187.38 of this title (relating to Motions for Rehearing).

*§187.39. Costs of Administrative Hearings.*

(a) Default Orders [~~Judgments~~]. In cases brought before SOAH, in the event that the respondent is adjudged to be in violation of the Act by default, the board has the authority to assess, in addition to penalty imposed, costs of the administrative hearing.

(b) Trial on the Merits. In cases brought before SOAH, in the event that the respondent is adjudged to be in violation of the Act after a trial on the merits, the board has the authority to assess in addition to the penalty imposed, the [~~actual~~] costs of the administrative hearing. [~~Such costs include, but are not limited to, investigative costs, witness fees, deposition expenses, travel expenses of witnesses, costs of adjudication before SOAH and any other costs that are necessary for the preparation of the board's case including the costs of any transcriptions of testimony.~~]

(c) Appeal. The costs of transcribing the testimony and preparing the record for an appeal by judicial review shall be paid by the party who appeals.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405490
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 305-7016

♦ ♦ ♦

## SUBCHAPTER E. PROCEEDINGS RELATING TO PROBATIONERS

### 22 TAC §187.43

The amendments are proposed under the authority of the Occupations Code Annotated, §§164.001-164.011; 164.051-164.061; 164.101-164.103; 164.151-164.154; 164.201-164.204; 165.001-165.008; 165.051; 165.101-165.103; 165.151-165.160 which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by this proposal.

*§187.43. Proceedings for the Modification/Termination of Agreed Orders and Disciplinary Orders.*

(a) Unless the board order specifies that the order shall or will be modified or terminated upon the fulfillment of certain conditions or the occurrence of certain events, the decision to modify or terminate a board order shall be a matter for the exercise of sound discretion by the board.

(b) Modification or termination requests shall not be contested matters, but instead shall be matters to be ruled upon through the exercise of sound discretion by the board.

(c) If a board order sets out certain conditions or events for granting modification or termination of an order, the licensee shall have the burden of establishing that such conditions or events have taken place or been met.

(d) If by the terms of the order no specific conditions or events trigger the requirement that the petition be granted, the licensee has the burden of proof of demonstrating that one or more of the following factors should be considered for purposes of analyzing the merits of the petition and exercising sound discretion:

(1) whether there has been a significant change in circumstances which indicates that it is in the best interest of the public and the licensee to modify or terminate the order;

(2) whether there has been an unanticipated, unique or undue hardship on the licensee as a result of the board order which goes beyond the natural adverse ramifications of the disciplinary action (i.e. impossibility of requirement, geographical problems). Economic hardships such as the denial of insurance coverage or an adverse action taken by a medical specialty board are not considered unanticipated, unique or undue hardships;

(3) whether the licensee has engaged in special activities which are particularly commendable or so meritorious as to make modification or termination appropriate; and

(4) whether the licensee has fulfilled the requirements of the licensee's order in a timely manner and cooperated with the board and board staff during the period of probation or restriction.

(e) Probationers must be in compliance with the terms and conditions of their orders in order for the board to consider modification or termination of an order unless the modification or termination relates to the factors outlined in subsection (d)(2) of this section.

(f) Unless the terms of the board order specify otherwise, petitions for modification or termination shall be in writing and filed with the director of compliance for the board 20 days prior to a hearing on the matter.

(g) Modification or termination requests may be made only once a year since the prior request for modification or termination unless a board order otherwise specifies, or upon an assertion in writing under oath by a petitioner indicating that a circumstance exists as described in subsection (d)(2) of this section. Upon receipt of the petition, the Director of Compliance [~~director of compliance~~] shall determine whether such a request is valid and meets the requirements of subsection (d)(2) of this section. A finding by the Director of Compliance [~~director of compliance~~] does not equate to such a finding by representatives of the board.

(h) For purposes of administrative convenience, modification or termination requests may be heard by the full board or by representatives of the board. If such a request is heard by representatives of the board, the representatives shall consist of at least one board member or one district review committee member. In the event such a request is heard by board representatives, the representatives of the board shall not be authorized to bind the board, but shall only make recommendations to the board regarding an appropriate disposition. The recommendation of such representatives shall be submitted to the full board for adoption or rejection in the form of an order drafted by board staff.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405491

Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 305-7016

♦ ♦ ♦

## SUBCHAPTER F. TEMPORARY SUSPENSION PROCEEDINGS

### 22 TAC §§187.55, 187.56, 187.58, 187.59, 187.61

The amendments are proposed under the authority of the Occupations Code Annotated, §§164.001-164.011; 164.051-164.061; 164.101-164.103; 164.151-164.154; 164.201-164.204; 165.001-165.008; 165.051; 165.101-165.103; 165.151-165.160 which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by this proposal.

*§187.55. Purpose.*

The purpose of a temporary suspension proceeding is to [~~provide procedures by which the board~~] will determine whether a person's license to practice medicine should be temporarily suspended in accordance with the Act, §164.059.

*§187.56. Convening a Disciplinary Panel.*

(a) The President of the board shall appoint a three-member disciplinary panel at the direction of any committee chair, any member of the Executive Committee, or any informal show compliance proceeding panel conveyed either verbally or in writing to the executive director or general counsel of the board.

(b) The disciplinary panel shall be composed of three members of the board, at least one of which must be a physician. The President of the board shall name a chair of the disciplinary panel.

(c) In the event of the recusal of a disciplinary panel member or the inability of a panel member to attend a temporary suspension proceeding, an alternate board member may serve on the disciplinary panel upon appointment by the president or presiding officer of the board.

(d) Notwithstanding the Open Meetings [~~Public Information~~] Act, Chapter 551, Tex. Gov't Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and the convening at one location of the disciplinary panel is inconvenient for any member of the disciplinary panel.

(e) A hearing before a disciplinary panel shall constitute a hearing before the board.

*§187.58. Procedures before the Disciplinary Panel.*

(a) In accordance with the Act, §164.004, an ISC is not required to be held prior to a hearing on temporary suspension. §164.004 further exempts a temporary suspension proceeding from the requirements of §2001.054(c), TEX. GOV'T CODE.

(b) To the extent practicable, in the discretion of the chair of the disciplinary panel, the sequence of events will be as follows:

(1) Call to Order;

(2) Roll Call;

(3) Calling of the Case;

(4) Recusal Statement;

(5) Introductions/Appearances on the Record;

(6) Opening Statements by Board Staff and Respondent;

(7) Presentation of evidence [~~and information~~] by Board Staff;

(8) Presentation of evidence [~~and information~~] on behalf of Respondent;

(9) Rebuttal by Board Staff and Respondent;

(10) Closing Arguments;

(A) Argument by Board Staff;

(B) Argument by Respondent;

(C) Final Argument by Board Staff;

(11) Deliberations;

(12) Announcement of Decision;

(13) Adjournment.

(c) A board attorney shall be designated as Counsel to the Panel and shall be present during the hearing and deliberations by the panel and shall advise the panel on all legal issues that arise during the hearing including objections to evidence and other evidentiary matters. The Counsel to the Panel shall be permitted to ask questions of witnesses, the board staff, the attorney for the licensee and other participants in the hearing.

*§187.59. Evidence.*

(a) In accordance with the APA, §2001.081 [~~Act, §164.059~~], the determination of the disciplinary panel may be based not only on evidence admissible under the Texas Rules of Evidence, but may be based on information of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs.

[~~(b) Presentations by the parties may be based on evidence or information and shall not be excluded on objection of a party unless determined by the chair that the evidence or information is clearly irrelevant or unduly inflammatory in nature; however, objections by a party may be noted for the record.~~]

[~~(c) Witnesses may provide sworn statements in writing or verbally and may choose to provide statements that are not sworn; however, whether a statement is sworn may be a factor to be considered by the disciplinary panel in evaluating the weight to be given to the statement.~~]

(b) [~~(d)~~] Questioning of witnesses by the parties or panel members shall be under the control of the chair of the disciplinary panel with due consideration being given to the need to obtain accurate information and prevent the harassment or undue embarrassment of witnesses.

(c) [~~(e)~~] In receiving information on which to base its determination of a continuing threat to the public welfare, the disciplinary panel may accept the testimony of witnesses by telephone.

*§187.61. Ancillary Proceeding.*

(a) A temporary suspension proceeding is ancillary to a disciplinary proceeding concerning the licensee's alleged violation(s) of the Act.

(b) A temporary suspension order is effective immediately on the date entered and shall remain in effect until a final or further order of the board is entered in the disciplinary proceeding.

(c) Upon the entry of a temporary suspension order, an ISC shall be scheduled as soon as practicable in the disciplinary proceeding in accordance with §164.004 of the Act, and §2001.054(c), Tex. Gov't Code. A second ISC is not required, however, if an ISC has previously been held in the disciplinary proceeding.

(d) If the matter is not resolved by an Agreed Order through the ISC, a formal Complaint [~~complaint~~] shall be filed in the disciplinary proceeding at the State Office of Administrative Hearings in accordance with §164.005 of the Act as soon as practicable after the ISC.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405492
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 305-7016

♦ ♦ ♦

# PART 14. TEXAS OPTOMETRY BOARD

## CHAPTER 277. PRACTICE AND PROCEDURE

### 22 TAC §277.1

The Texas Optometry Board proposes amendments to §277.1 to set a time limit for a response to an inquiry from the Board concerning a complaint. The time limit will insure that complaints are resolved quickly.

Chris Kloeris, executive director of the Texas Optometry Board, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implications for state and local governments as a result of enforcing or administering the rule.

Chris Kloeris also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments is that persons filing complaints with the Board can anticipate a timely resolution of the complaint. Persons affected by the amendments, subjects of complaints, are currently asked by letter to respond in this time period and a substantial number do so in a timely fashion. Since an extension would be available for good cause, the enforcement of this time period should not impose any additional costs on persons required to respond. No additional costs are foreseen for small or micro business.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.205.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets §351.205 as requiring the agency to timely resolve complaints and to adopt rules concerning the investigation of a complaint.

No other sections are affected by the amendments.

*§277.1. Complaint Procedures.*

(a) - (b) (No change).

(c) Investigation-Enforcement Committee.

(1) - (2) (No change.)

(3) On receipt of a complaint, the member in charge shall determine:

(A) (No change.)

(B) whether to send a letter to the person charged reciting that a complaint has been received and that while the investigating member cannot determine or pass upon the merits of the complaint without conducting further investigation that the subject of the complaint be asked to review the complaint to ensure that the Act is being complied with, and that if the allegations are true, to cease and desist from the alleged violations or words to that effect. The subject of the complaint shall have 14 days from the receipt of the Board's request to respond. The executive director may extend the time period upon a showing of good cause by the subject of the complaint;

(C) - (F) (No change.)

(4) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405465
Chris Kloeris
Executive Director
Texas Optometry Board
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 305-8502

♦ ♦ ♦

# PART 27. BOARD OF TAX PROFESSIONAL EXAMINERS

## CHAPTER 621. ADMINISTRATION

**22 TAC §621.1**

The Board of Tax Professional Examiners proposes an amendment to §621.1, Powers and Duties. This amendment implements the negotiated rulemaking and alternative dispute resolution programs.

Mr. David E. Montoya, Executive Director of the Board of Tax Professional Examiners, has determined that for the first five year period in which the proposed rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Mr. Montoya has also determined that for the first five-year period in which proposed rule is in effect, the proposed new section will not have an adverse economic effect on small businesses because the amended section of these rules impose no additional burden on anyone. There is no anticipated economic cost to persons who are required to comply with this rule as proposed.

The probable economic cost to persons required to comply with the amendment will be zero because the amendment merely ensure consistent administration of disciplinary actions by the Board.

Mr. Montoya has determined that for the first five-year period in which the proposed rule is in effect, the anticipated public benefit is the assurance that all disciplinary action taken by the Board will be consistent, thus ensuring faith and confidence in the Property Tax Professional Certification Act.

Comments on the proposal may be submitted to David E. Montoya, Executive Director, Texas State Board of Tax Professional Examiners, 333 Guadalupe, Tower II, Suite 520, Austin, Texas 78701 or faxed to his attention at (512) 305-7304.

The amendment is proposed under the authority of Texas Civil Statutes Occupations Code, Chapter 1151 Property Taxation Professional Certification Act, which provides the Board of Tax Professional Examiners with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other article, statute or code is affected by this proposed amendment.

*§621.1. Powers and Duties.*

(a) The following powers and duties authorized by statute to be bestowed upon and performed by the Board of Tax Professional Examiners are hereby delegated to the executive director of the Board of Tax Professional Examiners:

(1) - (14) (No change.)

(15) maintain a negotiated rulemaking program.

(A) It is the policy of the Board to encourage public input and negotiation in the Board's rulemaking process.

(B) A petition to initiate a rulemaking proceeding pursuant to §2001.021, Government Code, must be submitted to the Board's offices in writing. A petition must include:

*(i)* a brief explanation of the proposed rule;

*(ii)* the full text of the proposed rule, and, if the petition is to modify an existing rule, the text of the proposed rule prepared in the same manner as an amendment to legislation that clearly identifies any words to be added or deleted from the existing text by underscoring added words and striking through words to be deleted;

*(iii)* a concise explanation of the legal authority to adopt the proposed rule, including a specific reference to the particular statute or other authority that authorizes it;

*(iv)* an explanation of how the proposed rule would protect the public health, safety, and welfare within the jurisdiction of the Board;

*(v)* all available data or information showing a need for the proposed rule; and

*(vi)* such other information that the Board or the staff of the Board may request.

(C) The Board may initiate a negotiated rulemaking process pursuant to Chapter 2008, Government Code, upon:

*(i)* the filing of a petition to initiate the rulemaking proceeding under subparagraph (B);

*(ii)* the filing of a petition to initiate negotiated rulemaking proceeding with regard to a rule that has been proposed by the Board; or

*(iii)* a determination by the Board that negotiated rulemaking would be beneficial to the Board's consideration of a proposed rule.

*(iv)* The Board may select any method of negotiation specified in Chapter 2008, Government Code, including the appointment of a convener, a negotiated rule-making committee, and a facilitator. The Chairman shall make all appointments involved in the negotiated rule-making process.

*(v)* The Board may adopt, amend, or refuse to adopt a rule created through the negotiated rulemaking process. The Board may not adopt any rule or any provision within a rule that the Board has no legal authority to adopt.

(16) maintain a alternative dispute resolution program.

(A) It is the Board's policy to encourage the resolution and early settlement of all disputed matters, internal and external, through voluntary settlement procedures.

(B) The executive director shall designate at least one employee of the Board to serve as the Board's alternative dispute resolution coordinator to:

*(i)* coordinate the implementation of the Board's alternative dispute resolution policies;

*(ii)* serve as a resource for any training needed to implement the procedures for negotiated rule-making or alternative dispute resolution; and

*(iii)* collect data concerning the effectiveness of these procedures, as implemented by the Board.

(C) The Board, a respondent, the executive director, or any other party involved in an internal or external disputed matter may request that the matter be resolved through any manner of alternative dispute resolution specified in Chapter 154, Civil Practice and Remedies Code, including mediation, arbitration, and moderated settlement conferences, or through the appointment of an ombudsman.

(D) The allocation of the costs of alternative dispute resolution is subject to negotiation and agreement between the parties. The party who requests alternative dispute resolution may be liable for the cost of any third-party mediator, moderator, arbitrator, or ombudsman and shall otherwise bear her or his own cost arising from alternative dispute resolution.

(E) Any resolution reached as a result of an alternative dispute resolution procedure is intended to be through the voluntary agreement of the parties. Any resolution that purports to bind the Board must be approved by the Board at a meeting subject to the Texas Open Meetings Act, Chapter 551, Government Code.

(F) The Board is subject to the Texas Public Information Act, Chapter 552, Government Code. Any written record, communication, or other material is confidential only to the extent provided by law and subject to the exemptions provided in that Act.

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405462

David E. Montoya
Executive Director
Board of Tax Professional Examiners
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 305-7300

♦ ♦ ♦

# TITLE 37. PUBLIC SAFETY AND CORRECTIONS

## PART 5. TEXAS BOARD OF PARDONS AND PAROLES

### CHAPTER 141. GENERAL PROVISIONS

### SUBCHAPTER A. BOARD OF PARDONS AND PAROLES

**37 TAC §141.4**

The Texas Board of Pardons and Paroles proposes an amendment to 37 TAC §141.4, concerning meetings. The Board proposes an amendment to §141.4 to incorporate new language into Chapter 141, General Provisions. The function of the amended rule is to conform the board's rules to statute.

Rissie Owens, Chair of the Board, has determined that, for the first five-year period the amendment as proposed is in effect, no fiscal implications exist for state or local government as a result of enforcing or administering the amended section.

Ms. Owens also has determined that, for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of the amendment to this section will be to bring the rule into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended section as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, P.O. Box 13401, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendment is proposed under §508.047, Government Code, which requires the members of the board to meet at least once in each quarter of the calendar year at a site determined by the presiding officer.

No other statutes, articles or codes are affected by the amendment.

*§141.4. Meetings.*

The [~~policy~~] board meets at the call of the presiding officer (chair).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405416

Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 406-5388

♦ ♦ ♦

## CHAPTER 145. PAROLE
## SUBCHAPTER A. PAROLE PROCESS

### 37 TAC §145.12

The Texas Board of Pardons and Paroles proposes an amendment to 37 TAC §145.12, concerning action upon review. The Board proposes an amendment to §145.12 to clarify statutory requirements regarding the designation by voting panels of candidates for drug or alcohol abuse continuum of care treatment programs.

Rissie Owens, Chair of the Board, has determined that, for the first five-year period the proposed amendment is in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this amended section.

Ms. Owens also has determined that, for each year of the first five years the amendment as proposed is in effect, the public benefit anticipated as a result of the amendment to this section will be to bring the rule into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended section as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, P.O. Box 13401, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendment is proposed under §§508.185, 508.0441, 508.045, and 508.141, Government Code. Section 508.185 provides that a parole panel shall require as a condition of release on parole or release to mandatory supervision that an inmate who immediately before release is a participant in the program established under §508.0931 participate as a releasee in a drug or alcohol abuse continuum of care treatment program. Sections 508.0441, 508.045, and 508.141 authorize the Board to adopt reasonable rules as proper or necessary relating to conditions to be imposed on an offender, and to act on matters of release on parole.

No other statutes, articles or codes are affected by the proposed amendment.

*§145.12. Action upon Review.*

A case reviewed by a parole panel for parole consideration may be:

(1) - (4) (No change.)

(5) any person released to parole after completing a TDCJ treatment program as a prerequisite for parole, must participate in and complete any required post-release program. A parole panel shall require as a condition of release on parole or release to mandatory supervision that an offender who immediately before release is a participant in the program established under §501.0931 participate as a releasee in a drug or alcohol abuse continuum of care treatment program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405417
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 406-5388

♦ ♦ ♦

### 37 TAC §145.14

The Texas Board of Pardons and Paroles proposes an amendment to 37 TAC §145.14, concerning action upon review; release to mandatory supervision. The Board proposes an amendment to §145.14 in order to clarify the legal time frame during which the TDCJ-Parole Division shall provide written notice to an eligible offender of future consideration for release to mandatory supervision under §508.149, Government Code, in order to provide an offender the opportunity to submit information to the voting panel.

Rissie Owens, Chair of the Board, has determined that, for the first five-year period the proposed amendment is in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this amended section.

Ms. Owens also has determined that, for each year of the first five years the amendment as proposed is in effect, the public benefit anticipated as a result of the amendment to this section will be to bring the rule into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended section as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, P.O. Box 13401, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendment is proposed under §§508.149, 508.0441, and 508.045, Government Code. Section 508.149 provides authority for the discretionary release of offenders on mandatory supervision. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision.

No other statutes, articles or codes are affected by the proposed amendment.

*§145.14. Action Upon Review; Release to Mandatory Supervision.*

(a) (No change.)

(b) If TDCJ-CID determines that release of the offender will occur because the offender will reach the projected release date, the case shall be referred to a parole panel within 30 days of the offender's projected release date for consideration for release to mandatory supervision. [~~A parole panel shall consider the offender for release to mandatory supervision if release of the offender may occur because the offender will reach a mandatory supervision date.~~]

(c) Upon considering a case for release to mandatory supervision a parole panel may:

(1) (No change.)

(2) vote DMS Month/Year, deny release to mandatory supervision and set for review on a future specific month and year [~~(set-off)~~]. The next mandatory supervision review date [~~(Month/Year)~~] shall be set one year from [~~either~~] the [~~current~~] panel decision date and shall constitute the subsequent projected release date [~~or the previous panel decision date~~]; or,

(3) (No change.)

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405419
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 406-5388

♦ ♦ ♦

**37 TAC §145.15**

The Texas Board of Pardons and Paroles proposes an amendment to 37 TAC §145.15, concerning action upon review; extraordinary vote. The Board proposes an amendment to §145.15 in order to clarify the legal time frame during which the TDCJ-Parole Division shall provide written notice to an eligible offender of future consideration for release to mandatory supervision under §508.149, Government Code, in order to provide an offender the opportunity to submit information to the voting panel.

Rissie Owens, Chair of the Board, has determined that, for the first five-year period the proposed amendment is in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this amended section.

Ms. Owens also has determined that, for each year of the first five years the amendment as proposed is in effect, the public benefit anticipated as a result of the amendment to this section will be to bring the rule into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended section as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, P.O. Box 13401, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendment is proposed under §§508.149, 508.0441, 508.045, and 508.046, Government Code. Section 508.149 provides authority for the discretionary release of offenders on mandatory supervision. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision; and §508.046, relating to the extraordinary vote required for certain violent offenders.

No other statutes, articles or codes are affected by the proposed amendment.

*§145.15. Action Upon Review; Extraordinary Vote.*

(a) - (b) (No change.)

(c) Some offenders are eligible for consideration for release to Discretionary Mandatory Supervision if the sentence is for an offense committed on or after September 1, 1996. Prior to the offender reaching the projected [~~mandatory~~] release date, the voting options are the same as those listed in subsections (a) and (b) in this section. If TDCJ-CID determines that release of the offender will occur because the offender will reach the projected release date, the case shall be referred to a three-member parole panel within 30 days of the offender's projected release date for consideration for release to mandatory supervision [~~Once an offender reaches the mandatory supervision serve all (SA) date, a three-member parole panel will consider the offender for release to mandatory supervision~~] using the following options:

(1) (No change.)

(2) DMS (Month/Year): Deny release to mandatory supervision and set for review on a future specific month and year [~~(set-off)~~]. The next mandatory supervision review date (month/year) shall be set one year from the [~~current~~] panel decision date [~~or the previous panel decision date~~].

(d) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405420
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 406-5388

♦ ♦ ♦

# TITLE 40. SOCIAL SERVICES AND ASSISTANCE

## PART 22. TEXAS WORKFORCE INVESTMENT COUNCIL

### CHAPTER 901. DESIGNATION AND REDESIGNATION OF LOCAL WORKFORCE DEVELOPMENT AREAS

**40 TAC §901.1**

The Texas Workforce Investment Council (Council), proposes an amendment to §901.1, concerning procedures for considering redesignation of workforce development areas. The amendment to subsection (b) is made to update the Council's name.

Cheryl Fuller, Director, Texas Workforce Investment Council, anticipates that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Fuller has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide appropriate and efficient processes and procedures regarding the designation or redesignation of workforce development areas. There will be

no effect on small or micro businesses as a result of enforcing this section. There is no anticipated economic cost to entities or individuals that are required to comply with this section as proposed.

Comments on the proposal may be submitted to Cheryl Fuller, Director, Texas Workforce Investment Council, Post Office Box 2241, Austin, Texas, 78768-2241.

This amendment is proposed under the Texas Government Code, §2308.101(3) which requires the Council to recommend to the Governor the designation and redesignation of local workforce development areas and §2308.103(a)(1) which authorizes the Council to adopt rules.

No other code, statute, or article is affected by this proposed amendment.

*§901.1. Procedures for Considering Redesignation of Workforce Development Areas.*

(a) (No change.)

(b) Initiation of Redesignation. The Texas Workforce Investment Council [~~Texas Council on Workforce and Economic Competitiveness~~] may submit a written proposal or a local area or proposed local area may submit a written request to initiate the process to consider redesignation of workforce areas.

(c)-(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405486
Cheryl Fuller
Director
Texas Workforce Investment Council
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 936-8103

♦ ♦ ♦

# TITLE 43. TRANSPORTATION

## PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

### CHAPTER 1. MANAGEMENT

### SUBCHAPTER G. DONATIONS

**43 TAC §1.501, §1.503**

The Texas Department of Transportation (department) proposes amendments to §1.501 and §1.503, concerning donations.

EXPLANATION OF PROPOSED AMENDMENTS

Government Code, Chapter 575, requires the Texas Transportation Commission (commission) to acknowledge the receipt of a donation of $500 or more that is made to the department. Transportation Code, §201.206, authorizes the department to accept donations for the purpose of carrying out its functions and duties.

In most cases the commission accepts a donation before it is received by the department. In the case of donations that are under $500 or that are made to allow an employee to attend a conference for the purpose of making a presentation, the donation may be accepted by the executive director or the executive director's designee. It must then be acknowledged by the commission within 60 days.

Section 1.501 is amended to clarify the definition of donation. The definition excludes travel reimbursements received from government agencies that provide funding to the department, and it also excludes travel reimbursements received from organizations of which the department is a member. In addition, it excludes participation in the Adopt-a-Highway and similar programs. The excepted items are not gifts in the sense contemplated by Government Code, Chapter 575. Rather, they represent the conduct of ongoing department business in cooperation with an outside entity. The amendment reflects the department's current practice with regard to these items.

Section 1.503 is amended to permit the executive director or the executive director's designee to accept a donation of less than $1,500. In addition, the executive director or the executive director's designee may accept a donation of $1,500 or more to pay for the travel expenses of an employee who will be a speaker at a conference. The amendments increase the existing threshold from $500 to $1,500 so it will be the same as the threshold requiring a written donation agreement. This will allow the department to accept small donations on relatively short notice between commission meetings. It will also reduce the risk that the department will be required to decline all or part of a donation because it could not be scheduled for consideration by the commission on short notice.

FISCAL NOTE

James Bass, Director, Finance Division, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state government as a result of enforcing or administering the amendments. The amendments will be administered using department staff. There are no anticipated fiscal implications for local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the sections as proposed.

Richard Monroe, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Mr. Monroe has also determined that for each of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be to increase the department's flexibility and efficiency in accepting donations. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Richard Monroe, General Counsel, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on October 11, 2004.

STATUTORY AUTHORITY:

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE: Government Code, Chapter 575 and Transportation Code, §201.206.

*§1.501. Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commission--The Texas Transportation Commission.

(2) Department--The Texas Department of Transportation.

(3) Executive director--The executive director of the department or the executive director's designee not below the level of district engineer, division director, or special office director.

(4) Gift or donation--A contribution of anything of value given to the department, but not including:[.]

(A) reimbursement for an employee's travel expenses that is received from a governmental entity that provides funding to the department;

(B) reimbursement for an employee's travel expenses that is received from an organization of which the department is a member, including a federal pooled fund project; and

(C) participation in the Adopt-a-Highway, Adopt-a-Highway for Landscaping, Adopt-a-Freeway, and Adopt-an-Airport programs.

*§1.503. Acceptance.*

(a) Acceptance of a gift or donation made to the department under this subchapter must be approved by order of the commission, except that a gift or donation valued under $1,500 [~~$500~~] may be accepted with the approval of [~~approved by~~] the executive director.

(b) Except as provided in subsection (c) of this section, the commission or the department may accept a gift or donation if it determines that:

(1) the gift or donation will further the department's responsibilities;

(2) the donor is not a party to a contested case before the department, unless the decision in the case became final under Government Code, §2001.144, at least 30 days prior to the donation; and

(3) the donor is not subject to department regulation or oversight, or interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department.

(c) The commission or the department may approve the acceptance of a gift or donation notwithstanding subsection (b)(3) of this section if it determines that acceptance:

(1) would provide a significant public benefit; and

(2) would not influence or reasonably appear to influence the department in the performance of its duties.

(d) A donation of $1,500 [~~$500~~] or more for reimbursement for an employee's travel for the purpose of being a speaker at a conference may be accepted with the approval of the executive director.

(e) If the executive director approves the acceptance of a gift or donation valued at $500 or more under subsection (a) or (d) of this section, the [~~The~~] acceptance must be acknowledged by the commission not later than the 60th day after the date the donation is accepted.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405466
Richard D. Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 463-8630

♦ ♦ ♦

# CHAPTER 5. FINANCE
# SUBCHAPTER C. HARDSHIP FINANCING FOR UTILITY ADJUSTMENTS, RELOCATIONS, AND REMOVALS

**43 TAC §§5.21 - 5.29**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Transportation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Department of Transportation (department) proposes the repeal of §§5.21-5.29, concerning hardship financing for utility adjustments, relocations, and removals.

EXPLANATION OF PROPOSED REPEALS

In 1997, the 75th Legislature added Transportation Code, §203.0921, to enable the department to finance a utility relocation that is not eligible for state reimbursement when a short term financial condition exists that prevents the utility from being able to fund the relocation. By financing these utility adjustments, the department was able to complete its highway projects in a more timely manner, and displaced utilities were allowed to maintain continuous service to the public during highway construction.

Also in 1997, the 75th Legislature added Transportation Code, Chapter 222, Subchapter D, to establish a State Infrastructure Bank (SIB). The Texas Transportation Commission (commission) adopted rules regulating the use of the SIB, codified at 43 TAC Chapter 6. The commission uses the money deposited in the SIB to encourage public and private investment in transportation facilities that contribute to the multimodal and intermodal transportation capabilities of the state.

With the success of the SIB program, any financial condition that may exist that prevents the utility from being able to fund the relocation can be handled through the SIB revolving loan program with a variety of repayment options. The repeal of §§5.21-5.29 will better serve the department and state by utilizing the secondary funds of the SIB revolving loan program.

FISCAL NOTE

James Bass, Director, Finance Division, has determined that for each of the first five years the repeals are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeals. There are no anticipated economic costs for persons required to comply with the repeals as proposed.

Mr. Bass has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeals.

PUBLIC BENEFIT

Mr. Bass has also determined that for each of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing or administering the repeals will be to avoid delaying highway construction activities though the use of more efficient utility relocation work and a variety of loan financing options. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed repeals may be submitted to James Bass, Director, Finance Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on October 11, 2004.

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §203.095, which provides the commission with the authority to establish rules to implement Transportation Code, Chapter 203, Subchapter E.

CROSS REFERENCE TO STATUTE: Transportation Code, Section 203.0921.

*§5.21. Purpose and Scope.*
*§5.22. Definitions.*
*§5.23. Ineligible Payments.*
*§5.24. Request.*
*§5.25. Memorandum of Understanding.*
*§5.26. Commission Approval.*
*§5.27. Reimbursement Agreement.*
*§5.28. Release of Funds.*
*§5.29. Repayment and Default.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405467
Richard D. Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 463-8630

♦ ♦ ♦

# CHAPTER 9. CONTRACT MANAGEMENT
# SUBCHAPTER D. BUSINESS OPPORTUNITY PROGRAMS

**43 TAC §9.51, §9.54**

The Texas Department of Transportation (department) proposes amendments to §9.51, Definitions, and §9.54, Historically Underutilized Business (HUB) Program, concerning the department's business opportunity programs.

EXPLANATION OF PROPOSED AMENDMENTS

Transportation Code, §201.702, requires the department to set goals for the participation of disadvantaged businesses in its contracts; assess the availability of disadvantaged businesses; identify disadvantaged businesses that may provide supplies, materials, equipment or services to the department; and give these businesses full access to the department's contract bidding process.

Government Code, Chapter 2161, requires the Texas Building and Procurement Commission (TBPC) to administer general provisions of the HUB Program for the state and to certify HUBs.

The amendments to §9.51 and §9.54 update existing language to be consistent with new rules relating to HUBs promulgated by TBPC on June 11, 2004, 1 TAC §111.14.

Section 9.51 is amended to delete the definition of the General Services Commission (GSC), add the definition of the Texas Building and Procurement Commission (TBPC), and update the reference to reflect the change of the agency's name from GSC to TBPC. Renumbered §9.51(17) is amended to change the definition to a legal definition.

To be consistent with TBPC's new rules, §9.54(c) is amended by adding new paragraph (1) to specify the time for submission of HUB plans, notice of non-responsiveness to respondents who do not submit HUB plans as required, requirement of HUB identification, revision of HUB plans, department monitoring of compliance with HUB plans, and discretion of the department in determining remedies for non-compliance with HUB rules.

Renumbered §9.54(c)(2)(B) is amended to add the expected percentage of work the HUB will perform on contracts with no assigned goal.

Renumbered §9.54(c)(2)(C) is amended to add that the department will consider certain actions in determining a respondent's good faith effort in fulfilling its HUB plan.

Renumbered §9.54(c)(2)(C)(ii) is amended to specify that three or more qualified HUBs must be contacted by a respondent and to allow the HUBs five working days (unless circumstances require another time period) to respond to notices of HUB solicitations.

Renumbered §9.54(c)(2)(C) is amended to add clauses (vi) and (vii), which provide additional considerations of good faith, and clause (viii), which requires respondents with no assigned HUB goals to provide written justification for selection of non-HUBs.

Renumbered §9.54(c)(3)(B) is amended to incorporate by reference the provisions under §9.54(c)(2)(C) for respondents with assigned HUB goals and deleting redundant language.

Section 9.54(d) is amended to update the references of the former name of the GSC to the new agency name of TBPC.

FISCAL NOTE

James Bass, Director, Finance Division, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the amendments as proposed.

Thomas R. Bohuslav, P.E., Director, Construction Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Mr. Bohuslav has also determined that for each of the first five years the sections are in effect, the public benefit anticipated

as a result of enforcing or administering the amendments will be improved administration of the department's HUB program. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Thomas R. Bohuslav, P.E., Director, Construction Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on October 11, 2004.

STATUTORY AUTHORITY: The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE: Transportation Code §201.702.

*§9.51. Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Building contract--A contract entered under Transportation Code, Chapter 223, Subchapter A, for the construction or maintenance of a department building or appurtenant facilities.

(2) Business opportunity programs section (CSTB) of the Construction Division--The department office that certifies DBEs and SBEs and administers the DBE, HUB, and SBE programs.

(3) Commission--The Texas Transportation Commission.

(4) Construction contract--A contract entered under Transportation Code, Chapter 223, Subchapter A, for the construction or reconstruction of a segment of the state highway system.

(5) DBE certification--The process governed by 49 CFR Part 26 which verifies an applicant's eligibility to be a DBE.

(6) DBE joint venture--An association of a DBE firm and one or more other firms to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills, and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

(7) DBE, HUB, or SBE participation goal--A number representing participation in contracts and purchasing by a DBE, HUB, or SBE firm determined by a percentage of the total cost of the contract or purchase.

(8) Department--The Texas Department of Transportation.

(9) Director--The Director of the Construction Division of the department.

(10) Disadvantaged Business Enterprise (DBE)--As defined in 49 CFR §26.5, a for profit small business concern which is at least 51% owned by one or more socially and economically disadvantaged individuals, or in the case of a publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals, and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(11) District engineer--The chief administrative officer in charge of a district of the department.

(12) Division--An organizational unit in the department's Austin headquarters.

(13) Executive director--The executive director of the department or designee not below the level of assistant executive director.

(14) Federal-aid contract--A contract between the department and a contractor that is paid for in whole or in part with United States Department of Transportation or other federal financial assistance.

[~~(15) GSC--The General Services Commission.~~]

(15) [~~(16)~~] Good faith efforts--Efforts to achieve a DBE, HUB, or SBE goal that, by their scope, intensity, and appropriateness to the objectives, can reasonably be expected to fulfill the program requirements, even if they are not fully successful.

(16) [~~(17)~~] Historically Underutilized Business (HUB)--Any business so certified by the Texas Building and Procurement [~~General Services~~] Commission.

(17) [~~(18)~~] Liquidated damages--An amount contractually stipulated as a reasonable estimation of actual damages to be recovered by the department if the other party breaches the terms of the contract. [~~Project-related damages to the department's DBE/HUB/SBE programs separate from those costs associated with construction engineering costs.~~]

(18) [~~(19)~~] Maintenance contract--A contract entered under Transportation Code, Chapter 223, Subchapter A, for the maintenance of a segment of the state highway system.

(19) [~~(20)~~] Operating administration--The Federal Highway Administration (FHWA), Federal Aviation Administration (FAA), or Federal Transit Administration (FTA).

(20) [~~(21)~~] Packager--A person or firm engaged in the commercial packing of materials or supplies produced by others.

(21) [~~(22)~~] Race-neutral DBE or HUB participation--Any participation by a DBE or HUB through customary competitive procurement procedures.

(22) [~~(23)~~] Small Business Enterprise (SBE)--A firm (including its affiliates) whose annual gross receipts do not exceed the U.S. Small Business Administration's size standards for four consecutive years. The U.S. Small Business Administration's size standards are categorized by four-digit Standard Industrial Classification (SIC) codes as stated in 13 CFR §121.201. A firm must meet the size standard for the SIC code designated by the principal business of the firm. The department considers those firms that meet these size standards to be disadvantaged.

(23) [~~(24)~~] Socially and economically disadvantaged individuals--As defined in 49 CFR §26.5, individuals who are United States citizens or lawfully admitted permanent residents and who the department finds to be socially and economically disadvantaged on a case-by-case basis or who are members of the following groups which are rebuttably presumed to be socially and economically disadvantaged:

(A) Black Americans which includes persons having origins in any of the Black racial groups of Africa;

(B) Hispanic Americans which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(C) Native Americans which includes persons who are American Indian, Eskimo, Aleut, or native Hawaiian;

(D) Asian-Pacific Americans which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia,

Indonesia, Philippines, Brunei, Samoa, Guam, the Commonwealth of the Northern Marianas or the United States Trust Territories of the Pacific Islands (Republic of Palau), Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(E) Subcontinent Asian-Americans which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka; or

(F) women.

(24) TBPC--The Texas Building and Procurement Commission.

*§9.54. Historically Underutilized Business (HUB) Program.*

(a) Applicability. The HUB program is applicable to contracts relating to buildings, professional services, aviation, public transportation, private consultant services, and purchases funded entirely with state and local funds.

(b) HUB goals. The commission will establish overall annual HUB participation goals. Individual contract goals will be assigned as necessary to achieve the overall goal.

(1) Annual goals. The commission will establish annual agency HUB participation goals making use of disparity studies, including the disparity study described in Government Code, §2161.002(c) or its replacement, as well as other relevant information. The department will make a good faith effort to meet or exceed this annual goal.

(2) Contract goals. Individual contracts are assigned HUB goals based on the availability of qualified HUBs, work site location, dollar value of the contract, and type of work items specified in the contract. The department will assign individual contract goals for HUB participation to cumulatively meet the annual HUB goals that are not being met through race-neutral means.

(c) Contractor obligation. Department contracts, as listed in subsection (a) of this section, that are funded entirely with state and local funds will include a contract provision addressing HUB requirements.

(1) HUB plan. The HUB plan will be submitted at the same time as the response (bid, proposal, offer, or other applicable expression of interest). Responses that do not include a completed HUB plan shall be rejected due to material failure to comply with advertised specifications. A respondent must state whether it is a certified HUB. The department will approve any changes to the HUB plan and determine whether any additional opportunities exist for HUBs and will require submission of a revised HUB plan for additional opportunities if the original scope of work is expanded through a change order or contract amendment. The department will monitor the plan on a monthly basis to determine compliance with the plan. The contractor will be given an opportunity to explain why failure to fulfill the plan should not be attributed to a lack of good faith. If the determination is made that the HUB plan was not implemented in good faith, the department may report to the TPBC in the manner described by Title 1, Chapter 113, Subchapter F and may revoke the contract for breach of contract and make a claim against the contractor.

(2) [~~(1)~~] No assigned goal. A contract estimated to involve more than $100,000 with available subcontracting opportunities, but without an assigned goal, will include provisions requiring a HUB participation plan as a condition of contract award. The plan will include the following information.

(A) The names and vendor numbers of the HUBs that will be used during the course of the contract.

(B) The approximate dollar value expected to be paid to each HUB and expected percentage of the work the HUB will perform.

(C) When a contractor is unable to obtain HUB participation, a description of the actions taken in an attempt to solicit HUB participation. The department will consider these actions in determining a respondent's good faith effort. These actions may include, but are not limited to:

*(i)* advertising in general circulation and trade association media concerning subcontracting opportunities;

*(ii)* contacting three or more qualified HUBs and allowing no less than five working days from receipt of notice [~~sufficient time~~] for HUBs to participate effectively, unless circumstances require a different time period, which is determined by the department, and documented in the contract file;

*(iii)* dividing the contract work into reasonable portions in accordance with standard industry practices;

*(iv)* providing qualified HUBs with adequate information about bonding, insurance, plans, specifications, scope of work, and the requirements of the contract; [~~and~~]

*(v)* contacting, for HUB referrals, available small business community organizations, contractor groups, local, state, and federal business assistance offices, and other organizations that provide support services to HUBs;[~~.~~]

*(vi)* negotiating in good faith with qualified HUBs, not rejecting qualified HUBs who were also the best value responsive bidder;

*(vii)* participating in a Mentor Protégé Program under Government Code, §2161.065, and the submission of a protégé in the HUB plan; and

*(viii)* providing written justification of the selection process if a non-HUB subcontractor is selected.

(3) [~~(2)~~] Assigned goal. A contract with an assigned goal will include provisions that will require the contractor to satisfy the following stipulations as a condition of contract award.

(A) Commitments. Within the time specified in the contract or proposal, the contractor must furnish a commitment agreement for each certified HUB that will be used to meet the contract goal. The commitment agreement must include:

*(i)* the items of work to be performed;

*(ii)* the quantities of work or material;

*(iii)* the unit measure, unit price, and total cost for each item;

*(iv)* the total amount of the HUB commitment;

*(v)* the original signatures of the contractor and the proposed HUB; and

*(vi)* if the commitment involves a HUB material supplier, an explanation of the function to be performed and a description of any arrangements, including joint check agreements, made with other material suppliers, manufacturers, distributors, hauling firms, or freight companies.

(B) Good faith effort. If the contractor is unable to meet the goal, the contractor must document the good faith efforts taken to

obtain HUB participation in accordance with applicable contract provisions. The department will consider as good faith efforts all documented explanations that are submitted and that describe a contractor's failure to meet a goal, including actions described under paragraph (2)(C) of this subsection for contracts without an assigned goal. [:]

*[(i)* ~~advertising in general circulation, trade association, and/or minority/women focus media concerning subcontracting opportunities;~~]

*[(ii)* ~~providing written notice to at least five qualified HUBs allowing sufficient time for HUBs to participate effectively;~~]

*[(iii)* ~~dividing the contract work into reasonable portions in accordance with standard industry practices;~~]

*[(iv)* ~~documenting reasons for rejection or meeting with the rejected HUB to discuss the rejection;~~]

*[(v)* ~~providing qualified HUBs with adequate information about bonding, insurance, plans, specifications, scope of work, and the requirements of the contract;~~]

*[(vi)* ~~negotiating in good faith with qualified HUBs; and~~]

*[(vii)* ~~using the services of available minorities and women, community organizations, contractor groups, local, state, and federal business assistance offices, and other organizations that provide support services to HUBs.~~]

(4) [~~(3)~~] Reporting.

(A) The contractor must submit periodic reports at intervals specified in the contract using a report form acceptable to the department that includes, but is not limited to, identification of the HUB by name and vendor number. The report must indicate the actual amount paid to each HUB. The report must be submitted even if no payments were made during the period being reported. When required by the department, the contractor must attach proof of payment including, but not limited to, copies of canceled checks.

(B) The contractor must submit a final report in accordance with the contract, using a form acceptable to the department which shows the total paid to each HUB.

(5) [~~(4)~~] Credit for expenditures. A contractor will receive credit for all payments actually made to a HUB for work performed and costs incurred in accordance with the contract, including all subcontracted work.

(6) [~~(5)~~] Subcontracting.

(A) A HUB contractor or subcontractor may not subcontract more than 75% of a contract. The HUB shall perform not less than 25% of the value of the contract work with:

*(i)* assistance of employees employed and paid directly by the HUB;

*(ii)* employees leased from a licensed employee leasing company; and

*(iii)* equipment owned or rented directly by the HUB.

(B) A contractor may not furnish work crews to a HUB subcontractor.

(C) A HUB may lease equipment consistent with standard industry practice. A HUB may lease equipment from the prime contractor if a rental agreement, separate from the subcontract specifying the terms of the lease arrangement, is approved by the department prior to the HUB starting the work.

*(i)* If the equipment is of a specialized nature, the lease may include the operator. If the practice is generally acceptable within the industry, the operator may remain on the lessor's payroll. The operation of the equipment shall be subject to the full control of the HUB, for a short term, and involve a specialized piece of heavy equipment readily available at the job site.

*(ii)* For equipment that is not specialized, the HUB shall provide the operator and be responsible for all payroll and labor compliance requirements.

(d) HUB certification.

(1) The department and TBPC [~~GSC~~] operate under a memorandum of agreement that allows TBPC [~~GSC~~] to recognize the department's certified DBE firms as HUB firms. The TBPC [~~GSC~~] certifies businesses as HUBs using procedures set forth at Title 1, Texas Administrative Code, §§111.11 et seq. A business denied HUB certification though TBPC's [~~GSC's~~] certification process may appeal the TBPC [~~GSC~~] determination in accordance with procedures set forth at Title 1, Texas Administrative Code, §111.14 (relating to Protests). A business denied DBE/HUB certification through the department's certification process may seek review of the denial as described in §9.53(d)(8) and (10) of this subchapter.

(2) The department will submit information regarding DBEs who qualify as HUBs to TBPC [~~GSC~~] for certification.

(3) A challenge regarding a firm's eligibility as a HUB and based on the department's certification process must be submitted to the department for resolution. A HUB firm whose certification is based on the department's DBE certification will lose both certifications if found to be ineligible as a DBE.

(4) TBPC [~~GSC~~] maintains a directory of certified HUBs.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405468
Richard D. Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 463-8630

♦ ♦ ♦

# CHAPTER 21. RIGHT OF WAY
# SUBCHAPTER A. LAND ACQUISITION PROCEDURES

**43 TAC §21.4, §21.6**

The Texas Department of Transportation (department) proposes amendments to §21.4, concerning title insurance, authorizing payment of fees to title companies in conjunction with obtaining title insurance for the purchase of right of way, and §21.6, concerning use of abstract plant facilities, expanding the use of title examinations in lieu of obtaining title insurance for the purchase of right of way.

EXPLANATION OF PROPOSED AMENDMENTS

Transportation Code, Chapter 203, Subchapter D, authorizes the department to acquire real property that is necessary or convenient for the development of a state highway. Existing §21.4 and §21.6 establish procedures for the purchase of title insurance or, in the alternative, a title examination, to obtain for the department assurance of good title. The department often has difficulty obtaining the services of title companies due to the limited amount of compensation the department is able to pay title companies under the current rules.

The proposed amendment to §21.4 seeks to remove the existing financial disincentive for title companies to work with the state for the issuance of title insurance policies, while amended §21.6 authorizes the use of more alternatives for obtaining quality title examinations in those situations when a title company is unable or unwilling to provide services.

Section 21.4 is amended to authorize payment to the title company of fees other than the title policy premium amounts set by the State Board of Insurance, such as escrow/settlement fees, copying, delivery, and overnight express services. The department's current inability to pay closing fees that are customarily paid by private individuals and companies works as a disincentive for title companies to do state business. The proposed amendment limits payment of closing fees to those that are commercially reasonable and that are reasonably necessary to complete the closing.

The amendments to §21.6(b) clarify the procedure for obtaining title examination bid proposals. The existing requirement that the abstractor be located in the same county is eliminated to provide a larger pool of service providers. The amendment also clarifies that the department's Right of Way Division will provide the review and approval of bid proposals.

Section 21.6(c) provides an alternative method for utilizing title examinations when title companies cannot provide title insurance in a timely manner. Section 21.6(c) is added to authorize the district engineer to contract with any qualified title examiner to provide a title run sheet or title report to the district. There are many title examination businesses across the state doing similar work for mortgage lenders and other commercial entities. These title examination businesses can provide quick and competent title work.

FISCAL NOTE

James Bass, Director, Finance Division, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the sections as proposed.

John P. Campbell, P.E., Director, Right of Way Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Mr. Campbell has also determined that for each of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be to further the department's mission to provide an efficient and economical process for assuring that the state will have good title for real property acquired for the development of state highways. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to John P. Campbell, P.E., Director, Right of Way Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on October 11, 2004.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE: None.

*§21.4. Title Insurance.*

In the acquisition of right of way [~~right-of-way~~] by the department, title insurance may be purchased if it [~~such insurance~~] is available and provided the title company [~~companies~~] can supply the state's needs without delaying right-of-way acquisition. Fees paid for title insurance will be as established and [~~and/or~~] approved by the Texas Department [~~State Board~~] of Insurance. Additional fees for services that are not specified by the Texas Department of Insurance as being covered by approved title insurance rates may be paid to a title company if the services are reasonably necessary to complete the closing and the fees are commercially reasonable.

*§21.6. Use of Abstract Plant Facilities.*

(a) Whenever title policies cannot be obtained in the normal procedure, the determination of ownership and title defects, if any, are made through the use of abstract plant facilities under contract to the state. The contract may be by the hour or by the parcel depending on departmental needs and preference of the owner of the abstract plant facility. The title examinations may be made by licensed staff attorneys using the abstract facilities or by the abstract company providing a title run sheet directly to the department to be reviewed by other staff of the department.

(b) A bid proposal will be accepted from any abstract plant facility that [~~Bid proposals are taken from each abstractor in the county who~~] is willing and able to furnish the desired services, and will be [~~and~~] forwarded to the department's Right of Way Division for an [~~Austin for~~] administrative decision [~~decisions~~] as to acceptance or rejection.

(c) If the department cannot identify an abstract company that is willing or able to permit licensed staff attorneys to use its facilities or to provide title run sheets directly to the department on a timely basis as described in subsection (a) of this section, the department may contract with any qualified title examiner to provide a title run sheet or other title report, in a form and content acceptable to the district engineer, directly to the department to be reviewed by other staff of the department. A bid proposal may be submitted to the district engineer by any title examiner that is willing and able to furnish the desired services, and will be forwarded to the department's Right of Way Division for an administrative decision as to acceptance or rejection.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405469

Richard D. Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 463-8630

♦ ♦ ♦

# SUBCHAPTER I. REGULATION OF SIGNS ALONG INTERSTATE AND PRIMARY HIGHWAYS

**43 TAC §21.160**

The Texas Department of Transportation (department) proposes amendments to §21.160, concerning relocation of signs along interstate and primary highways.

EXPLANATION OF PROPOSED AMENDMENTS

Section 21.160 authorizes those sign owners whose structures are in conflict with a highway improvement project to move their signs to another location. Section 21.160 also sets the criteria for alternative locations for these relocated signs. There has been confusion due to the language included in §21.160(c)(10) that the department may consider sign structures as real property. This section is contrary to current department policy, and §21.160 is amended to delete any reference to the treatment of signs as real property for relocation assistance purposes. Section 21.160 is also amended to conform to *Texas Register* style.

FISCAL NOTE

James Bass, Director, Finance Division, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the section as proposed.

John P. Campbell, P.E., Director, Right of Way Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Mr. Campbell has also determined that for each of the first five years the section is in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be a consistent understanding and enforcement of department policy regarding the appraisal and relocation of outdoor advertising structures. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to John P. Campbell, P.E., Director, Right of Way Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on October 11, 2004.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §391.032, which provides the commission with the authority to establish rules for the regulation of outdoor advertising by the department.

CROSS REFERENCE TO STATUTE: Transportation Code, §391.032.

*§21.160. Relocation.*

(a) Purpose. This section provides for the relocation of certain signs along regulated highways within the state [~~State~~] of Texas that would otherwise be precluded under this subchapter. All requirements under this subchapter are to be complied with to the extent that they are not in conflict with the provisions of this section.

(b) Permit. When a sign within the proposed highway right of way is to be relocated to accommodate a regulated highway project, the district engineer of the department within whose jurisdiction the sign is located may issue a permit under the conditions set forth in subsections (c) and (d) of this section.

(c) Requirements.

(1) - (2) (No change.)

(3) The district engineer shall initially determine whether [~~that~~] the permit is necessary to avoid excessive project costs and/or a delay in the completion of the project.

(4) - (9) (No change.)

(10) Except in accordance with subsection (g) of this section, the sign replacement site is to be approved by the district engineer or his designee prior to the removal of the existing sign. [~~A permit may be issued pursuant to this section if a sign is designated by the owner as personal property and the sign owner receives relocation benefits, or if the sign is designated by the owner as realty, valued and purchased according to the department's sign valuation schedules, and retained by the sign owner. A permit may not be issued under this section to relocate a sign purchased through an eminent domain proceeding.~~]

(11) Relocation benefits will be paid in accordance with Subchapter G of this chapter.

(12) [~~(11)~~] The spacing requirements as provided in paragraph (8) of this subsection do not apply to:

(A) signs separated by buildings, natural surroundings, or other obstructions which cause only one sign located within the specified spacing to be visible at any one time; and

(B) on-premise or directional or official signs, as cited in Transportation Code, §391.031(b), nor shall measurements be made from these signs.

(d) (No change.)

(e) Waiver of damages. The sign owner must enter into a written agreement with the acquiring agency waiving and releasing any claim for damages against the acquiring agency and the state for any temporary or permanent taking of the sign in consideration of the payment by the acquiring agency of relocation benefits paid in accordance with Subchapter G of this chapter [~~a mutually agreed specified amount of money calculated to cover the cost to the sign owner of the relocation of the sign~~].

(f) (No change.)

(g) Relocation within a certified city [~~Within a Certified City~~]. If a displaced sign is subject to the jurisdiction of a municipality certified to control outdoor advertising pursuant to §21.151 of this title (relating to Local Control), and the sign will be relocated within that municipality, permission to relocate the sign must be obtained only from the certified municipality, in accordance with the municipality's

sign and zoning ordinances. A permit from the municipality will be required in order to receive relocation benefits from the department. A separate permit from the department is not required and the specific requirements for a relocation permit contained in subsection (c) of this section [~~subsection(c)~~] need not be met.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405470
Richard D. Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 463-8630

♦ ♦ ♦

## CHAPTER 25. TRAFFIC OPERATIONS
## SUBCHAPTER B. PROCEDURES FOR ESTABLISHING SPEED ZONES

The Texas Department of Transportation (department) proposes the repeal of §§25.20 - 25.24, and simultaneously proposes new §§25.20 - 25.24, and amendments to §25.25 concerning the department's Procedures for Establishing Speed Zones.

EXPLANATION OF PROPOSED REPEALS, NEW SECTIONS, AND AMENDMENTS

The department is revising the rules covering procedures for establishing speed zones to: incorporate revisions necessary due to statutory change; revise existing procedures for establishing speed limits on new roadways; remove metric measurements in the rules; clarify the use of buffer zones in some school zone speed limits; and improve the clarity and readability of the procedures.

Section 25 of House Bill 1325, 78th Legislature, Regular Session, 2003, prohibits the Texas Transportation Commission (commission) from establishing new environmental speed limits (ESLs), although existing ESLs may be retained. ESLs were initially created at the request of the Texas Commission on Environmental Quality (TCEQ) to assist the state in meeting federal air quality standards.

Section 25.20 is repealed and proposed in a revised form as new §25.20 to delete various terms that are no longer necessary due to the prohibition of new ESLs, and to add new definitions for "environmental speed limit," "regional mobility authority," "regional tollway authority," and the "Texas Commission on Environmental Quality" in accordance with statutory provisions. The internal department terms "Traffic Engineering Section" and "Traffic Operations Division" are also deleted since internal procedures are deleted in the remaining sections. The terms "department" for the Texas Department of Transportation and "trial run" have been moved to this definition section.

Section 25.21 is repealed and proposed as new §25.21 to remove internal department procedures and update the descriptions of current state law applicable to the creation of speed limits, including the addition of regional mobility authorities.

Section 25.22 is repealed and proposed as new §25.22 to remove internal department procedures and existing references to metric measurements since the department is not utilizing the metric system. Figures 1, 2, and 3 in this section are also revised to remove references to metric measurements.

Section 25.23 is repealed and adopted as a new section to delete internal department procedures. New §25.23(b)(2)(B) is revised from former §25.23(b)(5)(B) to clarify that interim speed limits for new or reconstructed roadways that are lower than the statewide maximum prima facie speed must be established by city ordinance or by commission minute order. The provision is added to ensure that speed limits established for these types of highways will be legally enforceable.

New §25.23(b)(4)(B) is revised from former §25.23(b)(7)(C) to clarify that speed check stations may be operated at the beginning, end, and middle of rural, low-volume segments of a highway when conducting a speed study, rather than the standard one-quarter of a mile distance, if the characteristics of the roadway are uniform. This provision is added to ensure that speed limits created for these types of highways are uniform and consistent.

This section is revised to allow for the use of trial runs for highways with low-traffic volumes rather than the use of speed check stations. The use of speed check stations is not appropriate for segments of highway which do not generate traffic flow of at least 125 passenger vehicles during a two-hour study period. This revision is designed to reflect existing department practice for speed limits created for rural highways and to ensure that these speed limits are as uniform and consistent as possible.

Existing §25.23(b)(10) is deleted, along with its accompanying figure, since this calculation sheet is an internal department document.

New §25.23(c)(6) is added to clarify the conditions under which speed limit buffer zones may be established and operated in conjunction with school zone speed limits on the state highway system. This new paragraph is added to ensure that these buffer zones compliment existing school zone speed limits and that these buffer zones will only be in effect when the school zone speed limit is also operating. The new paragraph also includes a description of the sign design that is to be used in association with school buffer zones.

New §25.23(d)(5)(A)(iii) clarifies that trial run data may be submitted for department review in light traffic volume areas.

New §25.23(d)(8)(B) clarifies proper placement of speed limit signs for speed zones located at intersections.

Existing §25.23(f) concerning environmental speed limits (ESLs) is repealed and replaced with new text. ESLs were originally created at the request of the TCEQ to assist the state in meeting federal air quality standards. House Bill 1365 prohibits the creation of any new ESLs, although existing ESLs may remain in place. New §25.23(f) eliminates references to the procedures necessary to create an ESL, notes that the department may not create additional ESLs, and describes the process the department must undertake to eliminate existing ESLs. This revision is made to conform to the provisions of House Bill 1365 and provide appropriate statewide guidance regarding existing ESLs.

New §25.23 removes existing references to metric measurements. Figure 12 is deleted.

Section 25.24 is repealed and adopted as new §25.24. Revisions to §25.24(a) include removal of internal department procedures, and adding a description of the approval process for

speed limits on the state highway system within the jurisdiction of a Regional Mobility Authority. This revision is designed to make this portion of the rules cover all entities that may be involved with the creation of speed limits on the state highway system.

Existing §25.24(b)(8) references the approval process for ESLs and is deleted pursuant to the requirements of House Bill 1365.

The figure in the repealed §25.24 is divided into three figures in new §25.24 to include additional information regarding speed limit approval for turnpikes under the department's authority, regional mobility authorities, and regional tollway authorities.

Amendments to §25.25 and Figure 1 of this section remove existing references to metric measurements. No changes are made to the remaining figures in §25.25.

FISCAL NOTE

James Bass, Director, Finance Division, has determined that for each of the first five years the repeals, new sections, and amendments are in effect, there will be minimal fiscal implications for the state as a result of enforcing or administering the repeals, new sections, and amendments. These changes will not result in additional costs to the department. There will be no impact on local governments. There are no anticipated economic costs for persons required to comply with the sections as proposed.

Carlos Lopez, P.E., Director, Traffic Operations Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeals, new sections, and amendments.

PUBLIC BENEFIT

Mr. Lopez has also determined that for each of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the repeals, new sections, and amendments will be a more uniform establishment of speed limits on the state highway system. The department anticipates that this will create a more efficient driving environment for the public. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed repeals, new sections, and amendments may be submitted to Carlos Lopez, P.E., Director, Traffic Operations Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on October 11, 2004.

**43 TAC §§25.20 - 25.24**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Transportation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department and more specifically, Transportation Code, §545.353(j), which prohibits the commission from declaring or determining a prima facie speed limit for environmental purposes on the state highway system.

CROSS REFERENCE TO STATUTE: Transportation Code, §545.353(j).

*§25.20. Definitions.*
*§25.21. Introduction.*
*§25.22. Regulatory and Advisory Speeds.*
*§25.23. Speed Zone Studies.*
*§25.24. Speed Zone Approval.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405471
Richard D. Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 463-8630

♦ ♦ ♦

**43 TAC §§25.20 - 25.24**

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department and more specifically, Transportation Code, §545.353(j), which prohibits the commission from declaring or determining a prima facie speed limit for environmental purposes on the state highway system.

CROSS REFERENCE TO STATUTE: Transportation Code, §545.353(j).

*§25.20. Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commission--The Texas Transportation Commission.

(2) Department--The Texas Department of Transportation.

(3) District--One of the 25 geographical areas managed by a district engineer, in which the department conducts its primary work activities.

(4) Environmental speed limit--A speed limit created by the commission at the request of the Texas Commission on Environmental Quality for the purposes of meeting federal air quality standards.

(5) Farm-to-Market (FM) or Ranch-to-Market (RM) road--A road shown in the records of the commission to be a farm-to-market or ranch-to-market road.

(6) May--A permissive condition.

(7) Regional Mobility Authority--An authority created under Transportation Code, Chapters 361 or 370, at the request of one or more counties and authorized by the commission for the purpose of constructing, maintaining, and operating transportation projects.

(8) Regional Tollway Authority--An authority created under Transportation Code, Chapter 366, consisting of two or more counties for the purpose of acquisition, design, financing, construction, operation, and maintenance of a turnpike project or system.

(9) Shall--A mandatory condition.

(10) Should--Advisable but not mandatory; however, any reason for not following the instruction shall be supported by sound engineering judgment.

(11) TCEQ--The Texas Commission on Environmental Quality which is the state air pollution control agency and is the principal authority in the state of Texas on matters relating to the quality of the state's air resources.

(12) Texas Manual on Uniform Traffic Control Devices (TMUTCD)--The manual, and any revisions, adopted by the commission as required under Transportation Code, §544.001.

(13) Trial runs--A drive through the speed zoned section of roadway at the chosen speeds to determine if the speeds are appropriate for the area.

*§25.21. Introduction.*

(a) Overview.

(1) Purpose. This subchapter provides the information and procedures necessary for establishing speed zones and advisory speeds on the state highway system.

(2) Applicability. This subchapter is intended for use by entities with authority to set speed zones. These procedures shall be followed by the department, cities, and commanding officers of the U.S. military reservations when establishing speed zones on the state highway system. Regional tollway and regional mobility authorities shall follow these procedures when establishing speed zones.

(3) Responsibilities.

(A) The department will:

*(i)* conduct engineering and traffic studies associated with the establishment of speed zones and advisory speeds;

*(ii)* request cities to pass ordinances or resolutions establishing speed zones when necessary; and

*(iii)* erect and maintain necessary speed limit and advisory speed signs and notify local enforcement authorities upon installation of the signs.

(B) Cities will:

*(i)* request that the district conduct engineering and traffic studies associated with the establishment of speed zones on the state highway system within the city limits or conduct the studies themselves; and

*(ii)* upon approval by the department, prepare and pass city ordinances or resolutions establishing speed zones.

(C) A commissioners court of a county by resolution may request, through the district office, that the commission determine and declare a reasonable and safe prima facie speed limit lower than that established by Transportation Code, §545.352, on any part of a farm-to-market or a ranch-to-market road that is without improved shoulders located in that county.

(b) Background.

(1) Prima facie concept. In Texas, all speed limits are considered "prima facie" limits. Prima facie limits are those limits which on the face of it, are reasonable and prudent under normal conditions.

(2) Authority to set speed zones.

(A) Transportation Code, §545.353, authorizes the commission to alter maximum speed limits on highway routes both within and outside of cities, provided the Procedures for Establishing Speed Zones are followed.

(B) Transportation Code, §545.353, subsections (h) and (i), address the commission's authority to establish a daytime speed limit of 75 mile per hour on a portion of the state highway system.

*(i)* The commission may establish such a speed limit in counties with a population density of less than 10 persons per square mile. Counties that are currently eligible for this higher maximum daytime speed limit are Andrews, Archer, Armstrong, Bailey, Baylor, Borden, Brewster, Briscoe, Brooks, Carson, Castro, Cochran, Coke, Coleman, Collingsworth, Concho, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dickens, Dimmit, Donley, Duval, Edwards, Fisher, Floyd, Foard, Gaines, Garza, Glasscock, Goliad, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hudspeth, Irion, Jack, Jeff Davis, Jim Hogg, Kenedy, Kent, Kimble, King, Kinney, Knox, La Salle, Lipscomb, Loving, Lynn, Martin, Mason, McCullough, McMullen, Menard, Mills, Motley, Ochiltree, Oldham, Pecos, Presidio, Reagan, Real, Reeves, Roberts, San Saba, Schleicher, Shackelford, Sherman, Sterling, Stonewall, Sutton, Swisher, Terrell, Throckmorton, Upton, Wheeler, Winkler, Yoakum and Zavala.

*(ii)* The department will reevaluate which counties are eligible for such a speed limit upon the release of each decennial federal census of the population.

*(iii)* In order to establish a 75 mile per hour daytime speed limit in an eligible county, the commission must determine that a 75 mile per hour speed limit is safe and reasonable.

*(iv)* A 75 mile per hour speed limit established under this section does not apply to trucks (other than light trucks and light trucks pulling a trailer), truck tractors, trailers, and semitrailers.

(C) The altering of the general statewide maximum speed limits to fit existing traffic and physical conditions of the highway constitutes the basic principle of speed zoning.

(D) Transportation Code, §545.355 and §545.356 give counties and cities the same authority within their respective jurisdictions. The law also provides that any speed zone on highway routes in cities established by commission minute order will supersede any conflicting zone set by city ordinance or resolution.

(E) Except in very unusual circumstances, the zoning on state highway routes within cities should only be set by city ordinance or resolution based upon the recommendations of the department. The usual practice, even for speed zones established by city ordinance or resolution, is for the department to make the necessary speed studies and recommend the most appropriate zoning to the city. Cities that have a traffic engineering staff may also make speed studies on state-maintained highways and recommend proper zoning. The procedure is permissible so long as the department is afforded an opportunity to review and approve the recommended city zoning.

(F) County commissioner courts and governing bodies of incorporated cities and villages may alter maximum prima facie speed limits on roadways under their jurisdiction in accordance with the provisions of Transportation Code, §545.355 and §545.356, respectively. However, alteration of maximum prima facie speed limits on any designated or marked roadway of the state highway system, even within the corporate limits of a city, typically requires an engineering and traffic investigation in accordance with §25.23 of this subchapter (relating to Speed Zone Studies), and the approval of the department.

(G) A county that increases the prima facie speed limit on a county road or highway is also required to conduct an engineering and traffic investigation. However, for a county road or highway outside the limits of the right of way of an officially designated or marked highway or road on the state highway system, the county commissioners court may declare a lower speed limit of not less than 30 miles per hour, if the commissioners court determines that the prima facie speed limit on the road or highway is unreasonable or unsafe.

(H) County authority does not extend to any segment of the state highway system; however, the commissioners court of a county, by resolution, may request the commission to determine and declare a reasonable and safe prima facie speed limit that is lower than a speed limit established by Transportation Code, §545.352, on any part of a farm-to-market or ranch-to-market road without improved shoulders located in that county.

(I) The commission shall give consideration to local public opinion and may determine and declare a lower speed limit on any part of the road without an engineering and traffic investigation, but the commission must use sound and generally accepted traffic engineering practices in determining and declaring the lower speed limit. Sound and generally accepted engineering practices for these FM and RM roadways without improved shoulders are described in §25.23(d) of this subchapter.

(J) This is different from the authority of cities, who may exercise concurrent authority subject only to commission override. In exercising their authority, cities must base any speed zones on engineering and traffic investigations, notwithstanding the type of road or street and whether the state highway system is involved.

(K) The authority of regional tollway authorities, regional mobility authorities, and the Commanding Officer of a United States Military Reservation to alter the speed limits are addressed in Transportation Code, §§370.033, 545.354, and 545.358. These decision making authorities are required to follow the speed zone procedures as adopted by the department when altering speed limits on off-system turnpikes or on-system highways within the confines of a military reservation.

(3) Guidelines for selecting speed limits. All authorized entities using these procedures should observe the following guidelines when setting speed limits.

(A) Speed limits on all roadways should be set based on spot speed studies and the 85th percentile operating speed (see §25.23 of this subchapter). Legal minimum and maximum speeds should establish the boundaries of the speed limits. If an existing roadway section's posted speed limit is to be raised, the roadway's roadside features should be examined to determine if modifications may be necessary to maintain roadside safety.

(B) It is appropriate for posted speed limits to be based on the 85th percentile speed, even for those sections of roadway that have an inferred design speed lower than the 85th percentile speed. Posting a roadway's speed limit based on its 85th percentile speed is considered good and typical engineering practice. This practice remains valid, even where the inferred design speed is lower than the resulting posted speed limit. In such situations, the posted speed limit would not be considered excessive or unsafe.

(C) Arbitrarily setting lower speed limits at point locations due to a perceived shorter than desirable stopping sight distance is neither effective nor good engineering practice.

(D) If a section of roadway has, or is expected to have, a posted speed in excess of the roadway's inferred design speed and a safety concern exists at the location, then appropriate warning or informational signs should be installed to warn or inform drivers of the condition.

*(i)* Slightly shorter than desirable stopping sight distances do not present an unsafe operating condition because of the conservative assumptions made in establishing desirable stopping sight distances.

*(ii)* Any sign is a roadside object that should be installed only when its need is clearly demonstrated.

(E) New or reconstructed roadways and roadway sections should be designed to accommodate operating speeds consistent with the roadway's highest anticipated posted speed limit based on the roadway's initial or ultimate function.

(c) Factors affecting safe speed.

(1) Introduction. This subsection discusses various factors influencing drivers and their perception of the safe speed at which to operate a vehicle. Because so many variables affect the safe operating speed of vehicles, it is not practical to consider each individually. These factors should be considered as a whole and weighed accordingly.

(2) Design and physical factors of the roadway.

(A) The design and physical factors of the roadway place a definite limitation on the safe operating speed of vehicles. These factors include:

*(i)* horizontal and vertical curves;

*(ii)* hidden driveways and other roadside developments;

*(iii)* high driveway density;

*(iv)* rural residential or developed areas; and

*(v)* lack of striped, improved shoulders.

(B) Speed restrictions, if any, imposed by some curves can be calculated easily and checked by the use of the ball bank indicator, described in §25.25(b) of this subchapter (relating to Curves and Turns). Likewise, the restriction imposed by obstructions to sight distance can be calculated.

(C) The effects of such factors as lane width, condition of surface, type and width of shoulders, frequency of intersections, and roadside development are not so easily measured. As a general rule, especially on tangents, these factors will be measured on the basis of prevailing speeds as determined by speed checks.

(3) The vehicle.

(A) The mechanical condition of vehicles and their characteristics for accelerating, decelerating, stopping, and turning affect safe speeds.

(B) The body roll angle of different makes of cars and year models of the same make also affects the safe operating speed on curves.

(C) Braking capabilities of different vehicles, such as passenger cars, buses, and various truck-trailer combinations, are obviously different, and it would generally not be practical to post safe speeds for each group.

(D) Normally, the posted speed will be that for the passenger car.

(4) The driver.

(A) The selection of speeds to be posted will be aimed at the ability and performance of the average driver.

(B) Average driver ability is considered in the form of perception - reaction time in the calculation of critical approach speeds to intersections, crosswalks, and locations with limited sight distance and in determining the posting distance for signs.

(5) Traffic.

(A) The presence of other vehicles on the highway, including those which may be entering, crossing, turning off, or parked, affects operating speeds.

(B) The frequency of pedestrians is an important factor. This is especially true at intersections with limited sight distance and at approaches to crosswalks.

(C) The speeds shall be posted for off-peak hour traffic on an average weekday. This will require drivers to adjust their speeds to lower values at times of peak hour traffic at some locations.

(6) Weather and visibility.

(A) Speeds will normally be selected and posted for good weather conditions and dry pavement. Texas law, however, also provides for the posting of speeds for wet weather conditions.

(B) Except in cases where the statewide maximum legal limits are posted, speeds will normally be posted on the basis of daylight speed values determined under good weather conditions. It is permissible, however, for different day and night speeds to be posted for speed zones where it can be shown to be necessary by nighttime speed surveys.

(C) When it can be shown that it is required during wet or inclement weather, a wet weather speed zone may be established by commission minute order.

*(i)* The wet weather speed limit should be posted in addition to the regular posted speed zone.

*(ii)* When appropriately signed, this wet weather speed limit will be effective during wet weather at any time during hours of daylight and darkness.

*§25.22. Regulatory and Advisory Speeds.*

(a) Application of regulatory and advisory speeds.

(1) Introduction.

(A) When an engineering and traffic investigation shows that the statutory speed limits are no longer applicable for the existing conditions, the prima facie maximum speed limits should be altered accordingly with a speed zone.

(B) The types of speed zones are as follows:

*(i)* regulatory; and

*(ii)* advisory.

(C) Advisory speeds may be posted within regulatory speed zones to advise drivers of a safe operating speed.

(2) Regulatory speeds.

(A) Regulatory speed zones should be applied only to those locations and sections of highways which are not dealt with adequately by the general statewide speed limits, and they should be indicators of the speed limitations imposed by physical and traffic conditions at such locations.

*(i)* Speed limits are determined by specific roadway and traffic conditions.

*(ii)* Speed limits should not be lowered to the extent necessary for a driver to avoid a collision with a pedestrian or other motorist who is entering or crossing the highway in violation of an existing traffic regulation.

(B) The following factors affect roadway safety and, therefore, should be considered when establishing speed limits:

*(i)* horizontal and vertical curves;

*(ii)* hidden driveways and other roadside developments;

*(iii)* high driveway density;

*(iv)* crash history along the location;

*(v)* rural residential or developed areas; and

*(vi)* lack of striped, improved shoulders.

(3) Advisory speeds.

(A) Advisory speeds are the desirable speeds for curves, intersections, or other locations where design standards or physical conditions of the roadway restrict safe operating speeds to values less than the maximum legal speeds or posted regulatory speed limit.

(B) The following figure illustrates the use and application of warning signs with advisory speeds. For additional information on determining advisory speeds, see §25.25 of this subchapter (relating to Application of Advisory Speeds).
Figure: 43 TAC §25.22(a)(3)(B)

(4) Advisory speed sections in regulatory zones.

(A) If an advisory speed is located within a regulatory speed zone, it is not necessary to lower the zone speed to conform with the advisory speed. In erecting the signs, care should be taken to not erect a regulatory speed limit sign so near the advisory speed sign that drivers may become confused by two different speed values.

(B) An advisory speed within a regulatory speed zone should not be posted for a value higher than the posted speed of the regulatory speed zone. Care should also be taken not to place a regulatory speed sign between an advisory speed sign and the location to which the advisory speed applies.

(5) Regulatory versus advisory speeds.

(A) Advisory speeds are determined primarily by physical and design characteristics of the roadway.

(B) The setting of regulatory speeds, while also affected by physical and design factors, is determined in large part by existing free flow traffic speeds.

(C) A commission minute order, or city or county ordinance or resolution is not required for advisory speed zones, but is required for regulatory speed zones.

(b) Regulatory speed zones.

(1) Introduction. A regulatory speed zone is the application, by commission minute order or city or county ordinance or resolution, of posted legal speed limits to sections of roadway where the numerical values of these special speed limits have been determined through engineering investigations of traffic and physical conditions.

(2) Within incorporated cities.

(A) The commission has the authority to:

*(i)* alter the speed limits on highways within the corporate limits of cities; or

*(ii)* override a speed limit set by city ordinance or resolution on such highways.

(B) Any speed limit over 60 miles per hour inside the city limit will be set by commission minute order.

(C) The department should make studies and present recommendations to the city for its acceptance and passage of a city ordinance or resolution to establish city speed zones.

(3) Highway approaches to incorporated cities.

(A) Speed zoning of highway approaches to cities should find its greatest application near the cities where built-up business and residential areas require speeds below the statewide maximum for safe operation.

(B) Graduated or buffer zones may be used on approaches to cities to accomplish a gradual reduction of highway speeds to the speed posted at the city limits.

(4) Minimum speed limits.

(A) The need for minimum speed limits should be determined through an engineering and traffic investigation. When such a speed is justified, it should be regulated in the same manner as maximum speed limits are regulated.

(B) Minimum speed limits are generally justified when studies show that slow moving vehicles on any part of a highway consistently impede the normal and reasonable movement of traffic to such an extent that they contribute to unnecessary lane changing or passing maneuvers.

(C) The maximum speed limits and the need for minimum speed limits must be determined from the same speed check data. Section 25.23(b) of this subchapter (relating to Determining the 85th Percentile Speed) contains a discussion of the 85th percentile speed and minimum limits.

(D) MINIMUM SPEED LIMIT signs (R2-4) shall be displayed in conjunction with and beneath the MAXIMUM SPEED LIMIT signs (R2-1) or as an integral sign (R2-4a).

(5) Regulatory speed signs (R2 Series).

(A) Signs for regulatory speed zones shall be:

*(i)* from the R2 series as shown in the Texas Manual on Uniform Traffic Control Devices for Streets and Highways (TMUTCD); and

*(ii)* of the appropriate design, including size, text, and color.

(B) At the end of speed zones on conventional highways where the maximum legal rural speeds are permissible, a combination of the R2-1 SPEED LIMIT 2860 and R2-3 NIGHT 2860 sign, or larger size sign showing those limits, should be erected in accordance with the TMUTCD.

(C) At the end of speed zones on freeways where the maximum legal rural speeds are permissible, the FR2-1 SPEED LIMIT 2860 sign (in combination with the FR2-3 NIGHT 2860 sign, where applicable) showing those limits shall be erected.

(D) The following figure illustrates the typical location and frequency of signs for regulatory speed zones.
Figure: 43 TAC §25.22(b)(5)(D)

*(i)* Distances shown between speed limit signs are examples and may be greater, depending on the results of speed checks.

*(ii)* Posted regulatory speed limits will be based on the 85th percentile, as described in §25.23(b) of this subchapter.

(6) Signs within cities. The department may erect and maintain speed limit signs on highway routes within the corporate limits of cities where speed limits based on the results of an engineering and traffic investigation are established.

(c) Construction regulatory and advisory speeds.

(1) Introduction. Traffic control in work sites should be designed on the assumption that drivers will only reduce their speeds if they clearly perceive a need to do so. Reduced speed zoning should be avoided as much as practicable.

(2) Advisory construction speeds.

(A) Advisory speed plates (CW13-1) in conjunction with construction warning signs can often be used more appropriately than construction regulatory speed signs.

(B) The advisory speed plates are intended to supplement construction warning signs advising drivers of a safe speed to drive through the section signed. See Part VI of the Texas Manual on Uniform Traffic Control Devices (TMUTCD) for sign detail and typical application diagrams.

(C) The advisory speed can be altered as needed by project conditions, and several different advisory speeds can be used for varying conditions throughout the project.

(3) Regulatory construction speed zones.

(A) Regulatory construction speed limits should be used only for sections of construction projects where speed control is of major importance and enforcement is available.

(B) Regulatory construction speed signs (R2-1) should be removed during periods when they are not needed in order to minimize interference with traffic. See Part VI of the TMUTCD for sign detail.

(C) Part VI of the TMUTCD states: "Reduced speed zoning should be avoided as much as practicable." Reduced speeds should only be posted in the vicinity of work being performed and not throughout the entire project. Traffic control plan designs should, as much as possible, accommodate the speeds existing prior to construction. These decisions, however, require engineering judgment depending on the nature of the project and other factors which affect the safety of the traveling public and construction workers.

(D) On sections of highway under construction, speed studies and other studies normally made in determining speeds to be posted for a regulatory speed zone are not required. In selecting the speeds to be posted, consideration should be given to:

*(i)* safe stopping sight distances;

*(ii)* construction equipment crossings;

*(iii)* the nature of the construction project; and

*(iv)* any other factors which affect the safety of the traveling public and construction workers.

(E) Only those speed limits authorized by commission minute order or city or county ordinance or resolutions may be posted.

(F) Construction speed zones are automatically canceled when construction is complete.

(4) Request for regulatory construction speed zones. If a city desires the commission to establish the zones, then it should send a written request to that district.

(5) Advisory speed construction warning plates (CW13-1).

(A) The CW13-1 or SCW13-1 ADVISORY SPEED plate may be used in conjunction with any construction warning sign to indicate the maximum safe speed for passenger cars around a curve or through a hazardous location. It shall not be used in conjunction with any sign other than a construction warning sign, nor shall it be used alone.

(B) The CW13-1 or SCW13-1 plate shall always be mounted on the same post with, and immediately below, the construction warning sign to which it applies.

*(i)* The CW13-1 plate shall be used with construction warning signs smaller than 36 by 36 inches.

*(ii)* The SCW13-1 plate shall be used with construction warning signs 36 by 36 inches and larger.

(C) The CW13-1 or SCW13-1 plate is classed with the construction warning signs because, when used, it is in effect a part of a construction warning sign.

(6) Regulatory construction speed limit signs.

(A) R2-1, ER2-1, or FR2-1 SPEED LIMIT signs shall be used for signing construction speed zones.

(B) Speed limit signs shall be erected only for the limits of the section of roadway where speed reduction is necessary for the safe operation of traffic and protection of construction personnel. In most cases, this will involve only a short section of roadway where work is in progress, but in some cases, it will involve partially completed sections extending for some distance.

(C) It is imperative that proper speed limits be posted in construction work zones. Improperly posted work zone speed limits adversely affect the flow of traffic by:

*(i)* encouraging driver disrespect for all speed limits; and

*(ii)* endangering the driver who observes an unreasonably low posted speed limit.

(D) The reduced speed limits are effective only within the limits where signs are erected, even though the entire length of the project may be covered by commission minute order. The following figure shows typical signing of a construction speed zone.
Figure: 43 TAC §25.22(c)(6)(D)

(7) If signs are temporarily unnecessary.

(A) If the reduced speed limits are not necessary for the safe operation of traffic during certain construction operations or those days and hours the contractor is not working, the regulatory construction speed limit signs should be made inoperative by:

*(i)* moving the signs to the edge of the right of way and facing them away from the roadway; or

*(ii)* covering the signs when the reduced speed limits are not necessary (Care should be taken to delineate the sign post so it does not become an invisible obstacle at night adjacent to the roadway.)

(B) Leaving speed limit signs in place when not needed has at least three adverse effects:

*(i)* drivers ignore the signs, and by doing so, they are subject to arrest;

*(ii)* respect for all speed limit signs is lessened; and

*(iii)* the law-abiding driver becomes a traffic hazard by observing the reduced speed.

(8) Signs installed by the contractor.

(A) Even though a contractor may furnish and/or install speed limit signs on a construction project, the engineer must see that contractors do not erect any signs of their own design with speed limits of their choosing.

(B) Except under the immediate direction of the engineer, contractors have no responsibility whatsoever for the design, location, or maintenance of speed limit signs.

(d) School speed zones.

(1) Introduction. Reduced speed limits should be used for school zones during the hours when children are going to and from school. Usually such school speed zones are only considered for schools located adjacent to highways or visible from highways. Pedestrian crossing activity should be the primary basis for reduced school speed zones. However, irregular traffic and pedestrian movements must also be considered when children are being dropped off and picked up from school. If, for some reason, there is a delay in the installation of a school flasher, other static signs for school zones should be installed as soon as possible after the minute order is approved.

(2) Signs.

(A) Where the department is responsible for signing school speed zones, the zones shall be signed with a combination of the S4-3 SCHOOL and the R2-1 SPEED LIMIT sign assembly. Flashing beacons shall also be used with the S4-4 WHEN FLASHING sign to identify the periods the school speed limit is in force. One sign, S5-1, could be used, which is a combination of these. The S5-1 SCHOOL SPEED LIMIT 2860 WHEN FLASHING may be used in place of the S4-3, R2-1, and S4-4. A commission minute order or city or county ordinance or resolution authorizing the reduced speed limit is required prior to use of these signs in school zones. Cities should be allowed to sign school speed zones in accordance with the other options set out in the Texas Manual on Uniform Traffic Control Devices.

(B) The S4-3, R2-1 and S4-4 sign assembly with flashers shall be mounted on a permanent type mounting and placed at each zone limit of the section of highway, road, or street through which the speed limit has been reduced. The sign assembly with flashing beacons may be placed off the shoulder of the road, in the median, or overhead to face traffic entering the school speed zone. An illustration of signing for school speed zones is shown in the TMUTCD. Other types of signs used by cities should be similarly located in conformance with the TMUTCD.

(3) Intervals of operation.

(A) Generally, the zones indicated on the signs should be in effect only during the following specified intervals:

*(i)* from approximately 45 minutes before school opens until classes begin;

*(ii)* from the beginning to the end of the lunch period; and

*(iii)* for a 30 minute period beginning at the close of school.

(B) The intervals of operation of the flashing beacons on the School Zone Speed Limit Assembly may be extended or revised for school events as mutually agreed upon by the school district and the entity responsible for the operation of the flashing beacons. In this case, the flashing beacons should only be operated when there is an increase in vehicular activity or pedestrian traffic in and around the roadway associated with the school event.

(4) More information. See the Texas Manual on Uniform Traffic Control Devices, Part VII, for more details on school areas.

(e) Private road speed zones.

(1) Introduction. In addition to setting speeds on highway routes, Transportation Code, §542.006, requires the commission to establish speed limits and erect necessary signing on private roads under certain conditions.

(2) Eligibility requirements. To be eligible for speed zoning, a private road must:

(A) be located in a subdivision that has a total of 400 or more residents or is adjacent to one or more other subdivisions that, together with the subdivision through which the road runs, have a combined total of 400 or more residents (All subdivisions included in the count must have plats filed in the deed records of a county.);

(B) be located outside of an incorporated area; and

(C) be patrolled or scheduled to be patrolled by a law enforcement entity.

(3) Process initiation. The process for speed zoning private roads must be initiated by petition from the majority of property owners along the road for which zoning is requested.

(4) Petitions rejected by the commission. If the commission rejects the petition, then the commission shall hold a public hearing on the advisability of making the speed restrictions applicable. For more details, see Transportation Code, §542.006(c), (d), and (e).

*§25.23. Speed Zone Studies.*

(a) Overview.

(1) Engineering and traffic investigation. This section includes a description of how to conduct an engineering and traffic investigation as the basis for establishing a regulatory speed zone along a roadway. This investigation is commonly called a speed zone study.

(2) Scope of study.

(A) The speed zone study should cover the entire length of a potential zone, even though an analysis of the data may later indicate that the actual limits of the area that requires zoning are less than the limits of the potential zone.

(B) A speed zone study consists of the following principle areas:

*(i)* determining the 85th percentile speed;

*(ii)* crash study;

*(iii)* developing of strip maps;

*(iv)* speed zone design; and

*(v)* rechecks of speed zones.

(b) Determining the 85th percentile speed.

(1) General concepts. The maximum speed limits posted as the result of a study should be based primarily on the 85th percentile speed, when adequate speed samples can be secured.

(2) Speed checks for new or reconstructed highways.

(A) Speed checks on new or reconstructed highway sections should not be performed until it is apparent that the traffic speeds have stabilized.

(B) As an interim measure, the statewide maximum speed or the design speed of the roadway may be posted on these sections while utilizing warning signs with advisory speed signs to alert drivers to any hazards. In any case, trial run data should be collected and considered by a traffic engineer before interim speed zones are posted. If the interim speed is lower than the statewide maximum speed, then the interim speed must be established by city ordinance or Texas Transportation Commission minute order. Once the traffic speeds have stabilized, normal speed zone studies should be completed and evaluated by a traffic engineer before the final speeds are posted.

(C) Speed checks should be made as quickly as possible, but it is not necessary to check the speed of every car. In many cases, traffic will be much too heavy for the observer to check all cars.

(3) Operation of speed check stations.

(A) Normal speed checks should:

*(i)* be made on average week days during off-peak hours under normal traffic conditions;

*(ii)* be made under favorable weather conditions;

*(iii)* include only "free floating" vehicles (see subparagraph (B) of this paragraph);

*(iv)* include a minimum of 125 cars in each direction at each station; and

*(v)* be discontinued after two hours, even if 125 cars have not been timed.

(B) The vehicles checked should be only those in which drivers are choosing their own speed ("free floating").

*(i)* When a line of vehicles moving closely behind each other passes the speed check station, only the speed of the first vehicle should be checked, since the other drivers may not be choosing their own speed.

*(ii)* Cars involved in passing or turning maneuvers should not be checked, because they are probably driving at an abnormal rate of speed.

(C) Trucks and buses should be recorded separately and should not be included as part of the 125-car total.

(4) Location of speed check stations.

(A) A complete picture of speeds in an area can only be obtained through the proper location of speed check stations. Ideally, speed checks at an infinite number of locations would be desirable. However, since this is not practical, speed check stations must be strategically located to show all the important changes in prevailing speeds.

(B) In urban areas and on approaches to cities, speed check stations:

*(i)* should generally be located at intervals of 0.25 mile or less if necessary to insure an accurate picture of the speed pattern;

*(ii)* should be located midway between signals or 0.2 miles from any signal, whichever is less, to ensure an accurate representation of speed patterns;

*(iii)* should take into account the locality and the uniformity of physical and traffic conditions;

*(iv)* may be determined by trial runs through the area if volumes are too low or if a recheck of speeds is all that is needed; and

*(v)* should be checked midway between interchanges on the main lanes of expressways and freeways.

(C) In rural areas, speed check stations:

*(i)* may be at intervals greater than 0.25 mile, as long as the general speed pattern is followed;

*(ii)* may only be necessary at each end and the middle point if the characteristics of the roadway are consistent throughout the entire section; and

*(iii)* may be determined by trial runs through the area if the characteristics of the roadway are consistent throughout the entire section and a speed check in that section indicates that 125 vehicles cannot be checked in the two hours.

(5) Measuring speeds.

(A) Radar speed meters which operate on the radar principle are normally used for making speed checks. These devices operate from the power of an automobile battery and give direct readings of vehicle speeds in miles per hour which are accurate to within 2 miles per hour.

(B) New technologies may be used in determining vehicular speeds for use in calculating 85th percentile speed if the measured speeds are accurate to within 2 miles per hour and the gap between vehicles is 3 seconds or greater. Examples of new technologies are counter-classifiers with the capability of classifying vehicles, determining vehicular speeds, and differentiating the gap between vehicles. These devices may include video imaging, tube counters, magnetic counters, inductive counters, etc.

(c) Schools.

(1) A regular speed zone must not change within the limits of a school speed zone since posting of a regular speed zone sign at the point of change would prematurely terminate the school speed zone. This is due to the fact that speed limits remain fixed until a revised limit is encountered.

(2) Speed checks provide a sound basis for selecting the proper speed limits for school zones. While it is not common practice to set speed limits significantly lower than the 85th percentile speed for regulatory speed zones, exceptions to this practice are often found at school zones.

(3) Factual studies, reason, and sound engineering judgment should govern the final decision on the maximum deviation from the 85th percentile speed which will provide a reasonable and prudent speed limit.

(4) It is not advisable to set a school speed limit above 35 miles per hour in either rural or urban areas. Lower school speed limits should be considered when the 85th percentile speed is below 50 miles per hour.

(5) When the results of a speed study indicate an 85th percentile speed below 50 miles per hour, the reduced school speed limit should not be more than 15 miles per hour below the 85th percentile speed or normal posted speed limits. If the 85th percentile speed is 55 miles per hour, the reduced school speed limit should be 20 miles per hour below the 85th percentile speed. Any roadway with an 85th percentile speed greater than 55 miles per hour requires a buffer zone to transition down to a 35 mile per hour speed limit.

(6) Operating School Buffer Zones With School Zones.

(A) Establishing buffer zones. In some cases, it may be appropriate to operate the buffer zone during the same time periods that the school speed zone operates. This will allow motorists to travel at the higher posted speeds through both zones when the slower speeds are not necessary. An example of this would be highway with a regular posted speed limit of 70 mph and a posted school zone speed limit of 35 mph. It would be appropriate to have a school transition speed zone of 55 mph that flashes with the 35 mph school zone on either side. This design makes for better public relations because people are not encouraged to violate or disrespect the law when driving through permanently fixed transition zones that are in affect 24 hours a day. Other situations may not lend themselves to such transitions zones, and should be left up to engineering judgment.

(B) Sign design.

*(i)* The basic sign design for a school transition speed limit shall be the same as that used for a regular school zone speed limit sign.

*(ii)* Where the department is responsible for signing school zone speeds and school transition speed zones, the "School Speed Limit XX When Flashing" signs shall be used.

(d) Speed zone design.

(1) Zone length.

(A) The length of any section of zone set for a particular speed should be as long as possible and still be consistent with the 85th percentile speeds. These zone lengths should be shown on the strip map in miles to three decimal places. Where graduated zones on the approach to the city are at locations where speeds fluctuate, the speed zone should generally be 0.2 mile or more.

(B) School zones are the exception to this rule and may be as short as reasonable in urban areas, depending on approach speeds.

*(i)* School zones in urban areas where speeds are 30 miles per hour or less may have school zones as short as 200 to 300 feet.

*(ii)* Where speeds exceed 40 miles per hour, the minimum school zone length should be 1,000 feet to allow for normal deceleration.

(2) Transitions.

(A) The change in speed between two adjacent zones should not normally be greater than 15 miles per hour, because the change in speed would be too abrupt for driver observance.

(B) If adjacent 85th percentile speeds show an abrupt change of more than 15 miles per hour, a transition zone of approximately 0.2 mile or more in length should be used.

(3) Urban areas. Texas law states that the maximum speed limit through an urban district is 30 miles per hour, unless zoned otherwise by proper authority. A reasonable and prudent speed limit should be determined and negotiated with the city and set by city ordinance or resolution or by commission minute order. A section of highway in this category should be speed zoned by commission minute order only if all negotiations with the city have proved unsuccessful.

(4) Directional differences.

(A) The 85th percentile speeds may differ considerably by direction at some locations. Such conditions are usually caused by relatively heavy development on one side of the road. Next to the development, motorists will tend to drive slower because of interference from traffic to and from the development.

(B) On divided highways, the zone speeds should conform to the 85th percentile speed even though this may require zoning for different speeds in opposite directions.

(C) On undivided roadways, the zones in opposite directions should be the same for enforcement purposes.

(5) Variation from 85th percentile.

(A) The posted speed selected is the nearest value ending in 5 or 0. The final speed limit may be lowered or raised by as much

as 5 miles per hour from the 85th percentile speed or trial-run speed (performed if 125 cars cannot be checked during the two hour speed check) based on the professional judgment of the supervising engineer. Only under special conditions would the zone speed vary further from the 85th percentile. Explanations of such conditions follow.

*(i)* Different results at adjacent speed check stations. If the 85th percentile speeds for adjacent speed check stations are approximately the same, they may be averaged to determine the zone speed. Any 85th percentile speed should not be included in such averages if it varies more than 7 miles per hour from the speed derived from the average.

*(ii)* Crash rate greater than average. On a section of highway having a crash rate greater than the statewide average crash rate for the same type of roadway section, the zone speed may be as much as 7 miles per hour lower than the 85th percentile speed. This should be considered more as an exception than as a rule, and should be done only when enforcement agencies will assure a degree of enforcement that will make the speed zone effective.

*(iii)* Light traffic volumes. At locations where traffic volumes are light and 125 cars cannot be checked in the two hours that the speed check station is operated, the 85th percentile speed may not be reliable. Trial runs need to be made and documented in the study.

*(iv)* Legislative or congressional action. Notwithstanding the volume of traffic, if legislative or congressional action results in the immediate increase in statewide maximum legal speed limits, then reasonable and prudent speed zones may be established by trial runs and engineering judgment in lieu of other speed check procedures provided in this subchapter. Speed zones established through this process should be rechecked in accordance with the procedure in subsection (e) of this section.

*(v)* Additional roadway factors. The posted speed limit may be reduced by as much as 10 miles per hour (12 miles per hour for locations with crash rates higher than the statewide average) below the 85th percentile speed or trial-run speed (performed if 125 cars cannot be checked during the two hour speed check) based on sound and generally accepted engineering judgment that includes consideration of the following factors:

*(I)* narrow roadway pavement widths - 20 feet or less, for example;

*(II)* horizontal and vertical curves - possible limited sight distance;

*(III)* hidden driveways and other developments - possible limited sight distance;

*(IV)* high driveway density - the higher the number of driveways, the higher the potential for encountering entering and turning vehicles;

*(V)* crash history along the location;

*(VI)* rural residential or developed areas - higher potential for pedestrian and bicycle traffic; and

*(VII)* lack of striped, improved shoulders - constricted lateral movement.

(B) Local public opinion may also be considered on farm-to-market and ranch-to-market roads without improved shoulders (Transportation Code, §545.3535(b)).

(C) The final decision on the amount of variation from the 85th percentile speed for a specific roadway should be based on the engineering judgment of the supervising engineer.

(D) Speed limits should not be posted more than 10 miles per hour (12 miles per hour for locations with crash rates higher than the statewide average) below the 85th percentile or trial-run speed (performed if 125 cars cannot be checked during the two hour speed check) since unreasonably low speed limits have not been shown to be an effective way to control speeding. Allowing too great a variation would risk losing motorist respect for speed limits and traffic control devices.

(6) Blanket lowering of maximum speed limits. Blanket lowering of speed limits may be justified to avoid non-compliance with direct requests from the federal government to lower the statewide maximum speed limit.

(7) Trial runs.

(A) For the trial run, an average passenger vehicle that is representative of most vehicles on the highway and a reasonably competent driver should be selected.

(B) After the 85th percentile speeds and zone lengths have been selected, several trial runs should be made through the area in both directions driving at the selected speeds. This should show any irregularities in the zoning which need correction.

(8) Location of regulatory speed limit signs.

(A) Speed zones are legally described to the nearest thousandth of a mile (5 feet). Regulatory speed limit signs should be located within approximately 5 feet of the actual reference marker or milepoint defined in the minute order or city ordinance or resolution.

(B) The locations of regulatory speed zones tied to speed changes should be examined carefully to ensure that signs can be erected within the 5 feet variation. If adherence to the 5 feet variation is not possible, the speed zone sign should be placed as close to the actual location defined in the minute order or city ordinance or resolution as practical. For example, if the reference marker or milepoint is located at an intersection, the regulatory speed limit signs should be located in accordance with standard procedures for placement of departure signing.

(e) Rechecks of speed zones.

(1) Introduction.

(A) The basic data on which speed zones are established are subject to change when conditions change, and established speed zones must not be considered permanent.

(B) Physical improvements to the roadway, increased roadside development, and heavy increases in traffic volumes justify a recheck of speeds to determine whether the 85th percentile speed has changed enough to require a change in the zone speeds.

(2) Frequency of rechecks.

(A) Periodic rechecks of all zones are desirable at intervals of about three to five years in urban areas regardless of roadway improvements, roadside developments, or increases in traffic volumes. Trial runs or rechecks of every third speed check station may be made.

(B) Rechecks in rural areas are desirable at intervals of five to ten years. In many instances, trial runs may be sufficient.

(C) If the speed checks or trial runs indicate a need for revision of the zone, rechecks of speeds should be made at all speed check stations for that particular section.

(f) Environmental speed limits.

(1) Existing environmental speed limits. Existing environmental speed limits created at the request of the Texas Commission on

Environmental Quality (TCEQ) may be retained on the state highway system until such time as:

(A) the TCEQ advises the department in writing that the speed limit is unnecessary; and

(B) a speed study performed for the area finds that the existing environmental speed zone is not reflective of the 85th percentile speed as determined by procedures detailed in this subchapter.

(2) New environmental speed limits prohibited. As per Transportation Code, §545.353(j), no new environmental speed limits may be created on the state highway system.

*§25.24. Speed Zone Approval.*

(a) State highway system. Speed zones on the state highway system and on turnpikes under the department's authority, may be set by commission minute order or by the city, depending on the circumstance.
Figure: 43 TAC §25.24(a)

(b) Regional Mobility Authorities. Speed zones on turnpikes under the control of a Regional Mobility Authority (RMA) may be set by order of the RMA board or by a city through which the turnpike passes.
Figure: 43 TAC §25.24(b)

(c) Regional Tollway Authorities. Speed zones on turnpikes under the control of a Regional Tollway Authority (RTA) may be set by order of the RTA board or by a city through which the turnpike passes.
Figure: 43 TAC §25.24(c)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405472
Richard D. Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 463-8630

♦ ♦ ♦

**43 TAC §25.25**

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department and more specifically, Transportation Code, §545.353(j), which prohibits the commission from declaring or determining a prima facie speed limit for environmental purposes on the state highway system.

CROSS REFERENCE TO STATUTE: Transportation Code, §545.353(j).

*§25.25. Application of Advisory Speeds.*

(a) Overview.

(1) (No change.)

(2) Advisory speed sign posting.

(A) (No change.)

(B) The W13-1 or SW13-1 sign shall always be mounted on the same post and immediately below the warning sign to which it applies.

*(i)* The W13-1 sign shall be used with warning signs smaller than [~~914 by 914 mm~~ (]36 by 36 inches[~~)~~].

*(ii)* The SW13-1 sign shall be used with warning signs [~~914 by 914 mm~~ (]36 by 36 inches[~~)~~] and larger.

(C) The following Figure 1 shows typical warning and advisory speed signing applications.
Figure 1: 43 TAC §25.25(a)(2)(C)

(b) Curves and turns.

(1) Introduction.

(A) - (C) (No change.)

(2) - (6) (No change.)

(7) Conducting ball-bank indicator test runs.

(A) - (C) (No change.)

(D) On each test run, the driver should reach the test run speed at a distance of at least [~~0.40 kilometer~~ (]0.25 mile[~~)~~] from the beginning of the curve and maintain this speed throughout the entire length of the curve. The path of the car throughout the curve should be maintained as nearly as possible in the center of the right hand lane.

(E) - (F) (No change.)

(8) - (9) (No change.)

(c) (No change.)

(d) Narrow and one-lane bridges.

(1) Introduction.

(A) The following bridges may require advisory speeds:

*(i)* narrow bridges with clear width between curbs less than 18 feet [~~6.1 meters (20 feet)~~], but more than [~~4.9 meters~~ (]16 feet[~~)~~]; and

*(ii)* one lane bridges with clear width between curbs of [~~4.9 meters~~ (]16 feet[~~)~~] or less.

(B) - (C) (No change.)

(2) Placement of signs.

(A) The normal location of the W5-2 or W5-2a NARROW BRIDGE or W5-3 ONE LANE BRIDGE signs, under which a W13-1 or SW13-1 ADVISORY SPEED sign would be mounted, is specified in Table 2c-4 of the latest edition of the Texas Manual on Uniform Traffic Control Devices for Streets and Highways.

(B) (No change.)

(e) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405473

Richard D. Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: October 10, 2004
For further information, please call: (512) 463-8630

♦ ♦ ♦

# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 13. CULTURAL RESOURCES

### PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

### CHAPTER 8. TEXSHARE LIBRARY CONSORTIUM

**13 TAC §8.3, §8.5**

The Texas State Library and Archives Commission has withdrawn from consideration the proposed amendments to §8.3 and §8.5 which appeared in the August 20, 2004, issue of the *Texas Register* (29 TexReg 8058).

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405423
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Effective date: August 27, 2004
For further information, please call: (512) 463-5459

♦ ♦ ♦

## TITLE 22. EXAMINING BOARDS

### PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

### CHAPTER 133. LICENSING

### SUBCHAPTER H. REVIEW PROCESS OF APPLICATIONS AND LICENSE ISSUANCE

**22 TAC §133.81**

The Texas Board of Professional Engineers has withdrawn from consideration the proposed amendment to §133.81 which appeared in the July 16, 2004, issue of the *Texas Register* (29 TexReg 6875).

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405478
Paul Cook
Assistant Executive Director
Texas Board of Professional Engineers
Effective date: August 30, 2004
For further information, please call: (512) 305-7016

♦ ♦ ♦

# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 354. MEDICAID HEALTH SERVICES

### SUBCHAPTER A. PURCHASED HEALTH SERVICES

The Health and Human Service Commission (HHSC) adopts the amendment to §354.1121, concerning general definitions for purchased health services. The amendment is adopted without changes to the proposed text as published in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5166) and will not be republished. HHSC adopts new §354.1187, concerning responsibilities of third-party billing vendors. The new rule is adopted without changes to the proposed text as published in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5167) and will not be republished.

The amendment to §354.1121 incorporates the definition of a third-party billing vendor into the current rule. The definitions of the succeeding terms were renumbered accordingly. The new rule §354.1187 requires third-party billing vendors to enter into a contract with HHSC prior to submitting claims on behalf of a provider of medical services under the medical assistance program authorizing such activity.

HHSC did not receive any comments regarding the proposed rules during the comment period, which included a public hearing on June 24, 2004.

### DIVISION 10. DEFINITIONS

**1 TAC §354.1121**

The amendment is adopted under the Texas Government Code, §531.033, which provides the commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 23, 2004.

TRD-200405343

Steve Aragón

Chief Counsel

Texas Health and Human Service Commission

Effective date: September 12, 2004

Proposal publication date: May 28, 2004

For further information, please call: (512) 424-6900

♦ ♦ ♦

### DIVISION 11. GENERAL ADMINISTRATION

**1 TAC §354.1187**

The new rule is adopted under the Texas Government Code, §531.033, which provides the commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 23, 2004.

TRD-200405344

Steve Aragón

Chief Counsel

Texas Health and Human Service Commission

Effective date: September 12, 2004

Proposal publication date: May 28, 2004

For further information, please call: (512) 424-6900

♦ ♦ ♦

### CHAPTER 355. MEDICAID REIMBURSEMENT RATES

### SUBCHAPTER J. PURCHASED HEALTH SERVICES

### DIVISION 6. RURAL HEALTH CLINICS

**1 TAC §355.8101**

The Health and Human Service Commission (HHSC) adopts the amendment to §355.8101, concerning the reimbursement for rural health clinics. The amendment is adopted without change to the proposed text as published in the March 26, 2004, issue of the *Texas Register* (29 TexReg 3000) and will not be republished.

The amendment to §355.8101 allows a Prospective Payment System (PPS) rate to be calculated for a Rural Health Clinic (RHC) that does not have an audited cost report from its Medicare Intermediary for its 1999 and/or 2000 fiscal years.

HHSC did not receive any comments regarding the proposed rule amendments during the comment period, which included a public hearing on April 14, 2004.

The amendment is adopted under the Texas Government Code, §531.033, which provides the commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 23, 2004.

TRD-200405345
Steve Aragón
Chief Counsel
Texas Health and Human Service Commission
Effective date: September 12, 2004
Proposal publication date: March 26, 2004
For further information, please call: (512) 424-6900

♦ ♦ ♦

## DIVISION 33. INDIAN HEALTH SERVICES

**1 TAC §355.8620**

The Health and Human Service Commission (HHSC) adopts new §355.8620, Reimbursement Methodology for Outpatient Services Provided in Indian Health Services Facilities Operating Under the Authority of P.L. 93-638. The new rule is adopted with changes to the proposed text as published in the March 26, 2004, issue of the *Texas Register* (29 TexReg 3007). The text of the rule will be republished.

The new §355.8620 allows the state to receive 100% federal medical assistance percentage (FMAP) reimbursement for outpatient services provided to Native American Medicaid beneficiaries in qualified facilities.

HHSC did not receive any comments regarding the proposed rule amendments during the comment period, which included a public hearing on April 14, 2004. However, minor changes were made based on comments from the Centers for Medicare and Medicaid Services (CMS).

Comment: CMS recommended word changes to the title of the rule.

Response: HHSC agreed with the comment. The changes were made to the title of the rule.

Comment: CMS recommended word changes to the rule to include "or tribe".

Response: HHSC agrees with the comment. The changes were made to the rule.

The new rule is adopted under the Texas Government Code, §531.033, which provides the commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

*§355.8620. Reimbursement Methodology for Outpatient Services Provided in Indian Health Services Facilities Operating Under the Authority of P.L. 93-638.*

For outpatient services provided to Native Americans by a qualified facility operated by the Indian Health Service or tribe, the applicable rate will be paid as published and specified by the Office of Management and Budget (OMB) in the Federal Register.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 23, 2004.

TRD-200405346
Steve Aragón
Chief Counsel
Texas Health and Human Service Commission
Effective date: September 12, 2004
Proposal publication date: March 26, 2004
For further information, please call: (512) 424-6900

♦ ♦ ♦

## CHAPTER 380. MEDICAL TRANSPORTATION PROGRAM

## SUBCHAPTER B. ELIGIBILITY, PROGRAM SERVICES, PROCESSES, ADDITIONAL TRANSPORTATION CONNECTED WITH AN AUTHORIZED TRIP, LIMITATIONS, AND EXCLUSIONS

**1 TAC §380.203, §380.207**

The Health and Human Service Commission (HHSC) adopts the amendments to §380.203, concerning program services, and §380.207, concerning program limitations, without changes to the proposed text as published in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5223) and will not be republished.

The amendments to §380.203 and §380.207 allow for nursing facility residents enrolled in the medical assistance program to obtain transportation services for renal dialysis through the Medical Transportation program (MTP).

HHSC did not receive any comments regarding the proposed rules during the comment period, which included a public hearing on June 24, 2004.

The amendments are adopted under the Texas Government Code, §531.033, which provides the commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2004.

TRD-200405369
Steve Aragón
Chief Counsel
Texas Health and Human Service Commission
Effective date: September 13, 2004
Proposal publication date: May 28, 2004
For further information, please call: (512) 424-6900

♦ ♦ ♦

# TITLE 10. COMMUNITY DEVELOPMENT

## PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

### CHAPTER 257. EXECUTIVE COMMITTEE FOR OFFICE OF RURAL COMMUNITY AFFAIRS

### SUBCHAPTER J. DESIGNATION OF A HOSPITAL AS A RURAL HOSPITAL

**10 TAC §257.705**

The Office of Rural Community Affairs (Office) adopts an amendment to §257.705 to revise the criteria for hospitals eligible to be designated as Critical Access Hospitals (CAH) without changes to the proposed text for §257.705 as published in the June 25, 2004, issue of the *Texas Register* (29 TexReg 5994).

The revision to §257.705 will add additional areas in the state that will be considered to be rural and shall make some hospitals eligible for CAH designation that were previously ineligible for CAH designation. To be considered for the CAH status, a hospital must be located in a non-metropolitan statistical area (non-MSA) county, as defined by the federal Office of Management and Budget (OMB). Federal law permits certain urban hospitals to be treated as rural for the purposes of receiving certain Medicare program benefits, including CAH status, if they meet certain criteria by the state. The State of Texas has the ability, under this program, to revise its definition of rural to include four hospitals which are now considered to be in urban areas and thus not eligible for CAH designation.

No written comments were received on the amendments to §257.705.

The amendments are adopted under §487.052 of the Texas Government Code, which provides the Office of Rural Community Affairs with the authority to adopt rules implementing the provisions of this chapter.

The Texas Administrative Code, Title 10, Part 6, Chapter 257, is affected by the adoption of the amendments to §255.705.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 23, 2004.

TRD-200405336
Robt. J. "Sam" Tessen
Executive Director
Office of Rural Community Affairs
Effective date: September 12, 2004
Proposal publication date: June 25, 2004
For further information, please call: (512) 936-6710

♦ ♦ ♦

# TITLE 16. ECONOMIC REGULATION

## PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

### CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

### SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

The Public Utility Commission of Texas (commission) adopts the repeal §26.32, relating to Protection Against Unauthorized Billing Charges ("Cramming"), without change, and adopts new §26.32, relating to Protection Against Unauthorized Billing Charges ("Cramming"), with changes to the proposed text as published in the February 27, 2004 *Texas Register* (29 TexReg 1791). The rule is intended to ensure that all customers in this state are protected from unauthorized charges on their telecommunications utility bills. The adopted §26.32, compared to the repealed §26.32, establishes and clarifies the requirements necessary to obtain (1) customer consent for charges for any product or service, and (2) verification of that consent. Project Number 28324 is assigned to this proceeding. Amendments to §26.130 (relating to Selection of Telecommunications Utilities) are also assigned to this project, but those changes were approved by the commission for publication during a public hearing conducted on October 23, 2003, and adopted during a public hearing conducted on April 15, 2004, and, therefore, precede the changes to §26.32.

The commission received comments on the proposed amendments from AT&T Communications of Texas, L.P., TCG Dallas and Teleport Communications Houston, Incorporated (collectively, AT&T), MCImetro Access Transmission Services LLC (MCI), the Office of the Attorney General of the State of Texas (OAG), Southwestern Bell Telephone, L.P. doing business as SBC Texas, (SBC), Sprint Corporation (Sprint), Texas Statewide Telephone Cooperative, Incorporated (TSTCI), Office of Public Utility Council (OPUC), Texas Telephone Association (TTA), VoiceStream GSM I Operating Company, LLC doing business as T-Mobile; VoiceStream Houston, Incorporated, doing business as T-Mobile; VoiceStream PCS II Corporation doing business as T-Mobile; AT&T Wireless Services, Incorporated; southwestern Bell Wireless, LLC doing business as Cingular Wireless; and Nextel of Texas, Incorporated (collectively, CMRS Group), and Verizon Southwest (Verizon). The commission also received reply comments from AT&T, MCI, OAG, OPUC, Verizon, SBC, and TSTCI.

A public hearing on the proposed amendments was held at the commission's offices on April 6, 2004, at 1:30 p.m. Representatives from AT&T, MCI, OAG, OPUC, SBC, TSTCI, and Verizon participated in the hearing in person and by telephone.

*General comments*

TSTCI stated in its initial comments that it did not find any changes that might be of concern to its member companies.

MCI asserted that, because the Federal Communications Commission (FCC) does not have any rules related to cramming, that any rule adopted by the commission exceeds its authority to promulgate rules pursuant to PURA §17.158 and §64.158.

The commission disagrees with MCI's assertion that the FCC's failure to adopt rules related to cramming prohibits the commission from adopting such rules. The Texas Legislature addressed cramming and adopted specific prohibitions in PURA, Chapters 17 and 64, intended to protect Texas customers from fraudulent, unfair, misleading, deceptive, or anticompetitive cramming practices. PURA §17.158 and §64.158 only prohibit the commission from adopting rules more burdensome than any *existing* FCC rules. The FCC has not adopted cramming rules. Rather, the FCC has adopted principles and guidelines related to cramming. However, the FCC's principles and guidelines do not rise to the level of a formal rulemaking with accompanying consequences for noncompliance. Therefore, there are no existing FCC rules with which the proposed rules would conflict or against which the proposed rules would be more burdensome. Therefore, the commission's adoption of cramming rules is consistent with the Legislature's prohibition in §17.158 and §64.158 and implements the consumer protection provisions therein.

SBC applauded the commission's efforts to curb the problem of cramming, but asserted that the number of cramming violations has decreased over the past several years and would, therefore, not appear to justify the proposed rule, which appears, to SBC, to be more burdensome than the commission's existing rule. SBC stated that its experience has been that customers resist a lengthy and redundant verification process, and that the proposed rule will increase customer frustration and make it more difficult for customers to change services.

The commission's responses to SBC's general comments are embedded within the commission's responses elsewhere in this preamble.

The OAG supported adoption of subsections (a), (b), and (c) as proposed and noted that these provisions should assist the commission in its enforcement efforts. The OAG also supported subsections (i), (j), and (k) as proposed. The OAG noted its support, specifically, for allowing the failure of a provider to provide proof and verification of authorization to establish a violation.

OPUC commented that the authorization and verification requirements of the proposed rule should help to ensure that customers are only charged for products or services for which they have agreed to be billed.

As a general matter, the commission notes that as a result of agreeing with certain commenters, rule references in the adopted rule may not match commenter references to the proposed rule as published. This mismatch is the result of the deletion of proposed subsection (f) and the corresponding renumbering of the remaining subsections. Where appropriate, the commission has cross-referenced the affected sections.

The commission also notes that by deleting proposed subsection (f), the commission deleted all references to "authorization" and instead believes that the term "consent" better clarifies the intent of this rule. Thus, while commenters' comments refer to authorization, the commission's responses to those comments and the provisions of the rule refer to "customer consent" or "verification of customer consent."

*Proposed Subsection (a), Purpose*

MCI stated that the proposed language in the first sentence for this subsection is clear and sufficient. MCI also stated, however, that it opposes the second sentence in this section because, in MCI's view, it blurs the distinction between §26.130 and §26.32.

The OAG supported the proposed subsection.

The commission disagrees with MCI and notes that §26.130 of this title relates to Selection of Telecommunications Utilities, while §26.32 of this title relates to Protection Against Unauthorized Billing Charges. Thus, while the two sections may have similarities, the commission finds they are clearly distinguishable one from the other.

The commission notes that subsection (a) has been amended in response to comments related to proposed subsections (f) and (g) regarding whether PURA requires that consent and verification be obtained in separate processes. Subsection (a) has been amended to reflect the commission's determination that service providers are required to obtain customer consent and to verify that consent pursuant to the verification requirements of the adopted subsection (f) of this section.

*Proposed Subsection (b), Application*

The OAG and MCI stated their support of the proposed subsection.

Verizon recommended exempting "business customers," including governmental units at all levels and corporate entities who have a contract for the services appearing on their bill, from the applicability of this rule. Verizon described business customers as sophisticated customers that often purchase their telecommunications services through negotiated contracts with standard terms that may include multiple states. Thus, Verizon concluded, Texas-specific cramming rules are unnecessary and unduly burdensome.

The commission declines to modify the rule to exempt "business customers" as recommended by Verizon. The statutory protections in PURA apply equally to all types of customers, without exception.

The CMRS Group provided extensive comment to demonstrate that the proposed cramming rule should not apply to Commercial Mobile Radio Service (CMRS) providers. Sprint stated that although it does not appear that the proposed rules were intended to include CMRS providers, subsection (b) could be interpreted to apply to them. The CMRS Group and Sprint suggested adding clarifying language to subsection (b) relating to this concern.

The commission agrees with the commenters and has modified the proposed rule to clarify that it does not apply to CMRS providers.

*Proposed Subsection (c), Definition*

AT&T, SBC, and MCI urge the commission to adopt a definition of "customer" that matches the definition of "subscriber" as used by the FCC in 47 C.F.R. §64.1100(h). They argue that the FCC's definition of subscriber is broader than the definition of customer used in the proposed rule.

AT&T asks for insertion of the phrase "or individual" after the phrase "any other entity" to clarify that other individuals may

have legal capacity to authorize that charges be placed on a customer's telephone bill.

The commission declines to adopt the definition of "customer" as requested by AT&T and other commenters. PURA §55.303 requires carriers to obtain authorization from the "customer." The term "customer" is defined in PURA §17.002 as "any person in whose name telephone … service is billed, including individuals, governmental units at all levels of government, corporate entities, and any other entity with legal capacity to be billed for telephone … service." The commission has consistently interpreted these provisions to require carriers to obtain authorization for a change in service provider, whether from the individual in whose name service is billed or from an individual or entity with legal capacity to act on behalf of that customer. Therefore, while tracking the language in PURA, the commission's rules and current practice provide carriers and customers the flexibility to obtain authorization from the spouse of the account holder and other persons with a legal relationship to the account holder in a manner similar to the FCC's definition of "subscriber." Accordingly, the commission declines to change the proposed rule as requested by some of the commenters.

*Proposed Subsection (d), Requirements for billing authorized charges*

AT&T opposed proposed subsections (d), (f), and (g), because, in AT&T's opinion, they create a two-tiered verification process by creating an artificial distinction between "customer authorization" and "verification of authorization." AT&T argued that PURA §17.151(b) and §64.151(b) only require a record of customer consent, as defined by §17.151(a)(2) and §64.151(a)(2). AT&T argued that PURA does not require any of the proposed rule's four methods for the consent/authorization portion for obtaining customer consent. In its reply comments, AT&T stressed its statutory interpretation and asserted that the commission seems to be pursuing an unnecessary and arbitrary distinction between "consent" and "verification" by unreasonably assigning more significance to the word "and" in PURA §17.151(b) and §64.151(b) than is warranted or suggested by any other part of Chapters 17 and 64. In its reply comments, MCI argued that PURA §17.151(a) and §64.151(a) cannot be read to require that customer consent must be obtained as provided by §17.151(b) or §64.151(b). MCI also asserted that the history of existing §26.32 supports MCI's interpretation, and cited to AT&T's estimated $20 million cost of compliance if the "rule is revised as proposed." AT&T concluded that a plain reading of the statute is that a customer's consent must be verified for consent to occur, and that the statute prescribed at least four methods to obtain that verified consent.

OPUC agreed with the proposed interpretation of PURA §17.151 and §64.151 and concluded that those sections grant the commission sufficient authority to adopt the changes in proposed subsections (d), (f), and (g). OPUC argued that a reasonable interpretation of §17.151 and §64.151 is that consent and verification are two distinct steps necessary to obtain a customer's valid authorization for a charge to appear on their bill.

The commission agrees with the commenters' arguments and concludes that PURA allows and commission policy supports a one-step process for verification of customer consent by service providers. In response to these comments, the rule has been changed to delete the proposed subsections (d)(3), (d)(4), and (f). The rule has been renumbered to reflect these changes.

SBC stated that proposed subsection (d)(2) requires the service provider to maintain the record of authorization for at least 24 months immediately after the authorization is obtained, but that it is not clear whether the intent of the proposed rule also includes a requirement to maintain the record of verification.

The commission agrees with SBC and notes that subsection (d)(2) has been modified to require service providers to maintain records of customer "verified consent" for at least 24 months immediately after obtaining that verified consent.

SBC stated that it is unclear how customer authorization and verification of authorization may be obtained in one transaction as provided for by subsection (d)(4).

Since proposed subsection (d)(4) has been deleted and authorization and verification combined into a single-step process, the commission need not address this comment.

AT&T, Sprint, SBC, and, in its reply comments, MCI, recommended eliminating the requirement in subsection (d)(5) for the service provider to provide, during the sales transaction, the customer with both a toll-free telephone number and an address to which a customer may write. These commenters stated that carriers should not be compelled to provide an address unless the customer requests it. Sprint asserted that, due to space limitations on its bills, it estimates that compliance with this rule would cost between $267,000 and $356,000.

The commission declines to modify the rule as recommended by Sprint and other commenters because, pursuant to PURA §17.151(a)(3)(A), the service provider must provide customers with both a toll-free telephone number and an address. Thus, the statute requires service providers to make the contact information available to customers. Moreover, §64.151(a)(3)(A) of PURA likewise requires that this be provided to customers. Therefore, the costs of compliance stated by Sprint should have already been incurred and expensed. Accordingly, the commission declines to modify proposed subsection (d)(5) (now subsection (d)(3)) of the rule.

SBC suggested modifying proposed subsections (d)(6) and (7) to require that either the service provider or its billing agent provide the business information referred to in (d)(6) and obtain authorization from the billing telecommunication utility referred to in (d)(7). SBC stated that the billing telecommunications utility may contract with either the service provider or the billing agent and, in that regard, is only able to exert influence on the entity with which it has contracted. Similarly, Sprint described arrangements between the billing clearinghouse, Billing and Collection (B&C) client, service provider, billing agent and billing utility and explained that some entities whose charges appear on the Sprint ILEC invoice are not a Sprint B&C client. According to Sprint, it maintains appropriate records in paper files, but not in systems that are accessible by customer-service representatives. Without quantification, Sprint asserts that the proposed rule would require it to implement a systematic conversion of the data that would require significant investment.

PURA §17.151(a)(3) and §64.151(a)(3) clearly state that the service provider *and* the billing agent for the service provider must contract with the billing utility, and §17.151(c) and §64.151(c) require that such contract include the service provider's name, address and business telephone number. Accordingly, the commission declines to modify proposed subsections (d)(6) and (7) (now subsections (d)(4) and (5)) of the rule.

Because Sprint failed to quantify its claims regarding economic impact, the commission declines to make the changes proposed by Sprint because the commission cannot assess the merits of Sprint's claims. Moreover, the commission notes that the obligations contained in the adopted subsections (d)(4) and (5) predate this rule and therefore any financial impact should have already been absorbed by Sprint.

Sprint stated that proposed subsection (d)(7) imposes operational difficulties and infringes on the proprietary nature of Sprint's B&C clients. According to Sprint, this subsection requires the service provider and its billing agent to execute written agreements with the billing telecommunications utility that must be maintained by all entities engaged in the B&C service. Sprint explained that it does not have a direct B&C agreement with every entity that places charges on its invoice, and asserted that all B&C agreements and any correspondence between Sprint and its B&C clients are considered proprietary and are not provided to the third-party entities.

The commission adopts subsection (d)(5) (published as subsection (d)(7)) without modification. PURA §17.151(a)(3)(B) requires the service provider and any billing agent for the service provider to contract with the billing utility to bill for products and services on the billing utility's bill. That contract must include certain contact information of the service provider and must be maintained by the billing utility for as long as the billing for the products or services continues and for 24 months immediately following permanent discontinuation of the billing. *See* PURA §§17.151(a)(3)(B), 17.151(c), 64.151(a)(3)(B), and 64.151(c). The commission notes that the requirements contained in subsection (d)(5), as adopted, are identical to the requirements found in repealed §26.32(d)(5).

*Proposed Subsection (e), Post-termination billing*

MCI, AT&T, SBC, and the OAG recommended modifying the proposed rule to clarify that a provider may bill customers for validly provided unpaid and/or outstanding balances.

The commission agrees with these comments and makes appropriate clarifying changes to proposed subsection (e).

*Proposed Subsection (f), Authorization requirements*

Arguing that the commission lacks the requisite statutory authority to adopt the proposed changes to this subsection, MCI, AT&T, and SBC stated that PURA does not require any of the proposed rule's four methods for the consent/authorization portion of obtaining customer consent; the four methods outlined in PURA §17.151(b) and §64.151(b), the commenters continued, apply solely to the verification of the customer consent/authorization.

The OAG supported the more specific requirements for authorization and verification and stated that it believes those requirements are consistent with the commission's specific authority under PURA §17.151(b) and §64.151(b). As summarized above, in its reply comments, OPUC disagreed with MCI and AT&T and concluded that the commission not only had authority to adopt the "two-tiered" approach, but that it was a reasonable interpretation of PURA to do so as proposed in new subsections (d), (f), and (g).

The commission agrees with the commenters' arguments and concludes that PURA allows and commission policy supports a one-step process for verification of customer consent by service providers. In response to these comments, the commission deletes proposed subsection (f) and renumbers the rule to reflect this change. The commission notes that as a result of deleting proposed subsection (f), the new subsection (f) (formerly subsection (g)) has been modified to clarify that the verification of customer consent must not contain discussion related to obtaining customer consent.

SBC states that subsection (g)(3) is redundant because it "requires that the customer once again verify that he or she has authorized the product or service." SBC also commented that it is not clear whether the reference in proposed subsection (f)(2) to "explicit customer acknowledgment" is a reference to third-party verification. In addition, SBC stated that it was not clear about what would constitute "explicit customer acknowledgment."

The commission clarifies that the term "explicit customer acknowledgment" is practically identical to the statutory language related to customer authorization, *i.e.* "clearly and explicitly consented," found in PURA §17.151(a)(2) and §64.151(a)(2). Because subsection (f) has been deleted and subsection (g) renumbered, the potential for conflict has been eliminated and, therefore, the commission need not address the balance of these comments.

AT&T asserted that under *existing* subsection (e)(2) (proposed (f)(3)), a service provider has the option of using Third Party Verification (TPV) as a "verification" method but that the proposed amendment to subsection (f)(3) (relating to authorization requirements) eliminates that option. AT&T stated that the use of TPV is generally less expensive than audio recording, and the TPV is a relatively efficient process that the industry has used for years to verify changes to customer services. AT&T requested explicitly listing TPV as an available verification method. In their reply comments, Verizon and TTA made statements similar to those of AT&T relating to TPV.

Since proposed subsection (f) has been deleted and the verification of consent provision contained in the renumbered subsection (g) authorizes TPV, the commission need not address this comment.

SBC commented that proposed subsection (f)(3)(A)(ii) conflicts with the definition of "customer" in subsection (c). SBC reasoned that proposed subsection (f) permits an employee or agent to authorize a change in service, but that, in SBC's opinion, the definition of "customer" is more limited and does not extend beyond an individual customer or their spouse.

Since proposed subsection (f) has been deleted, the commission need not address this comment; however, to the extent the definition of "customer" appears in other sections of the rule, the commission declines to change the definition of "customer" as requested by some of the commenters. As discussed previously in response to comments on subsection (c), the commission declines to change the definition of "customer" to match the FCC's definition of "subscriber" as requested by some of the commenters. PURA §17.151 requires carriers to obtain consent from the "customer." The term "customer" is defined in PURA §17.002 as "any person in whose name telephone … service is billed, including individuals, governmental units at all levels of government, corporate entities, and any other entity with legal capacity to be billed for telephone … service." The commission has consistently interpreted these provisions to require carriers to obtain consent to a charge for a product or service, whether from the individual in whose name service is billed or from an individual or entity with legal capacity to act on behalf of that customer. Therefore, the commission's rules and current practice already provide the flexibility provided by the FCC's definition of "subscriber."

MCI, Sprint, AT&T, and in their reply comments, Verizon, SBC, and TTA, stated that compliance with proposed subsection (f) would be burdensome because obtaining evidence of customer authorization by any of the four methods would impose significant costs on providers but would provide no additional customer protection. Sprint asserted that the proposed rule would require Sprint to audio-record its sales transactions, at a one-time implementation cost of $14.4 million. Sprint asserted that the existing rule provides customers substantial protection against cramming and noted that it had received only 23 cramming complaints since January 2002. According to MCI, evidence of verification is sufficient to establish customer intent. Verizon and MCI argued that the commission has not shown that there is a cramming problem in Texas that would justify the costs of the proposed rule amendments or the need for them. Several commenters suggested the proposed rule would contribute to customer frustration.

Since proposed subsection (f), which contained the requirement to record customer consent, has been deleted in response to the comments and the renumbered subsection (g) only requires recording of verification of consent, the commission need not address this comment.

MCI, AT&T, SBC, TTA, and Verizon argued that the proposed rule exceeds the commission's statutory authority by requiring authorization of *customer-initiated* requests for a product or service by one of the four methods. PURA, some commenters continued, exempts customer-initiated transactions from "verification" unless verification is required by federal law or rules implementing federal law. Verizon expressed concern that the proposed rule goes well beyond the finding of the FCC regarding the root cause of cramming complaints, *i.e.*, third party miscellaneous service providers and would place onerous requirements on the service providers, even when the order for services results from traditional customer-initiated transactions for basic local exchange and adjunct services. In its reply comments, TSTCI noted that its member companies are not large enough to maintain systems for voice recording, utilizing an independent third party verification company or toll-free electronic authorization for every customer request for new services. Several commenters asserted that implementation costs related to the elimination of the customer-initiated exception could be several million dollars.

The commission agrees with the commenters and has modified the renumbered subsection (f)(4) of the adopted rule to preserve the customer-initiated exception.

AT&T urged amending proposed subsection (f)(3)(A)(i), and, if the commission retains the proposed distinction between "authorization" and "verification of authorization," in proposed subsection (g)(4)(A)(i), to explicitly permit the use of a single document for obtaining written or electronically signed "authorization" and "verification of authorization" for charges to be placed on a bill and for changes in service.

Since proposed subsection (f) has been deleted in response to the comments and subsection (g) has been renumbered, the commission need not address this comment because new subsection (f) explicitly contemplates a single-step process for verification of customer consent.

OPUC recommended adding two provisions to proposed subsection (f)(1). First, OPUC suggested adding a provision that would require a customer to be informed of the effective date of the product or service to which they are agreeing. OPUC stated that it may not always be the case that products or services would begin immediately and, therefore, the customer should be informed of when charges will begin to accrue. Second, OPUC suggested adding a provision to require the customer to be given an explanation of how a product or service can be cancelled, including any charges associated with such cancellation. OPUC stated that this information should be part of the authorization process, not the verification process, because some customers may decline a product or service in which they initially had an interest if the conditions for termination were unacceptable to them. MCI opposed, as unnecessary and inconsistent with the FCC's requirements, the amendments proposed by OPUC.

Since proposed subsection (f) has been deleted in response to comments and the new subsection (f) (formerly subsection (g)) prohibits elements of the sales call from the verification of consent procedure, the commission need not address this comment.

*Proposed Subsection (g), Verification requirements*

SBC asserted that subsections (f)(2) and (g)(3) are redundant.

Since proposed subsection (f) has been deleted in response to the comments and subsection (g) has been renumbered, two subsections are not redundant and the commission need not further address this comment.

The commission further notes that as a result of deleting proposed subsection (f), the commission has modified adopted subsection (f) (formerly subsection (g)) to clarify that the verification of customer consent procedure must not contain discussion related to obtaining customer consent.

SBC stated also that it is not clear whether two separate explicit customer acknowledgments that charges will be assessed on their bill must be obtained by the requirements in subsection (f) and those in subsection (g)(2).

Since proposed subsection (f) has been deleted in response to the comments and the renumbered subsection (g) contains a single acknowledgement, the commission need not address this comment.

The OAG and OPUC stated they did not see a compelling reason to provide an exception permitting, under certain circumstances, a sales representative to remain on the call during the third-party verification process, particularly if the exception is granted based only on a written statement. In the OAG's opinion, such a requirement would be difficult to enforce. In any event, OAG and OPUC asserted such an exception should not last two years.

The commission adopts subsection (f)(4)(D)(vii) (proposed subsection (g)(4)(D)(vii)) without changes. The commission disagrees with the OAG's opposition to adopted subsection (f)(4)(D)(vii). The exemption given to a service provider or its sales representative that does not possess the current technology to drop off or hand off the sales call to the TPV is consistent with the commission's reliance in the slamming portion of this project on the FCC's *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket No. 94-129, Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 18 FCC Record 5099 (rel. March 17, 2003) (Third Order on Reconsideration). The FCC, at paragraph 35 of that Order, while not eliminating the drop-off requirement by a sales agent once the sales call is transferred to a TPV, determined that in certain specific situations, it may be infeasible for the submitting telecommunications utility to "drop-off" the line without losing the prospective customer. Thus, the FCC

adopted an exemption to the slamming provision's general "drop-off" requirement under 47 C.F.R. §64.1120(c)(3)(ii). The commission believes it is reasonable to extend the same exemption to cramming situations. The commission believes that it is recognizing diversity in technology and is not imposing technological uniformity that some service providers may not be able to afford or that is inconsistent with the service provider's current sales network and procedures. Notwithstanding the limited drop-off exemption, the commission notes that this rule still requires carriers electing to use TPV to recognize that the TPV portion of the customer call is beyond the influence of the sales representative and that no interference from the sales representative with the verification of authorization process is permitted. The commission observes that the voice recordings will demonstrate to enforcement staff whether or not the sales representative conduct violated this subsection.

*Proposed Subsection (h), Expiration of Authorization and Verification of Authorization*

The OAG supported the rule as proposed and stated that allowing authorizations to expire should assist in reducing allegations of cramming by customers who simply do not remember providing their authorizations at some point in the past.

AT&T, SBC, Verizon, and, in its reply comments, MCI suggested modifying the proposed rule to reflect that the customer's authorization is valid under the terms of that customer's authorization; *i.e.*, if the customer authorizes service to be provided in 90 days, then the authorization should be valid for at least that long.

The rule states that the product or service must be implemented within 60 calendar days from the date of authorization. The rule is necessary to protect a customer from being charged for a product or service ordered that was never provided. If the provider contracts with a business customer to provide multi-line or multi-location service on a date certain, then it is acceptable to the commission that the provider provisions such service within the contractual date. If, however, there is no existing and valid contractual obligation for a date certain, then the provider must implement the product or service as provided by this subsection. The commission notes that this information should be provided to the commission upon request in the event, for example, that the commission is investigating alleged cramming violations. The commission adopts subsection (g) (formerly subsection (h)) with change to provide an exception for business customers with multi-line or multi-location service.

*Proposed Subsection (i), Unauthorized charged*

Asserting that 45 calendar days is incongruous with the clause "shall promptly," OPUC recommended changing the time for meeting the requirements of proposed subsection (i)(1) from 45, to 15, calendar days. SBC and MCI opposed OPUC's proposal and noted that the 45-day time period is provided for by PURA §17.152(a) and §64.152(a).

The commission agrees with SBC and MCI and adopts subsection (h) (formerly subsection (i)) without the changes suggested by OPUC.

Without identifying a specific provision of proposed subsection (i), Sprint opposed several aspects of this subsection asserting that the requirements would impose improper obligations on the billing utility to "police the sales and verification processes of its billing and collection clients." Specifically, Sprint argues that under the rule as proposed it would not have: (1) knowledge that a customer's bill was charged improperly, (2) the capability to adjudicate cramming complaints; (3) the operational or technical capability to comply; or (4) the contractual flexibility to comply with the rule.

Sprint also comments that proposed subsection (i) unfairly requires "service providers to discontinue billing for a product or service after the termination or cancellation date." Sprint believes that this requirement is inconsistent with the commission's carrier notification rule.

Proposed subsection (i) is identical to repealed subsection (f) and PURA §17.152. As such, Sprint is currently required to comply with these requirements. The commission is confused and concerned about Sprint's apparent admission that it does not have the operational or technical capability to comply with the existing statute and rule. That issue aside, the commission adopts subsection (h) and declines to modify proposed subsection (i) as proposed by Sprint because the requirements in proposed subsection (i) are identical to current subsection (f) and PURA §§17.151(f), 17.152, 17.153, 64.151(f), and 64.153.

OPUC also recommended adding a provision under §26.32(i)(1)(A)(vi) to require that a record kept by the billing telecommunications utility on the unauthorized charge include an identification of what service or product was unauthorized. OPUC suggested that this information may help establish a pattern or practice by the service provider, and could help alert the commission that certain products or services have been targeted for improper inclusion on bills.

SBC and MCI opposed OPUC's proposal and noted that PURA §17.152(b) and §64.152(b) specifically outline what the record should contain.

The commission agrees with SBC and MCI and, in addition, finds that it is not necessary to amend the rule as proposed by OPUC because the commission does not scan its records for that information on a regular basis and, more importantly, the customers who complain typically tell CPD the nature of the disputed charge and CPD, therefore, is aware of the types of trends OPUC references in its comment.

*Proposed Subsection (j), Notice of customer rights*

SBC suggested revising the notice requirements in proposed subsection (j)(4) to eliminate the requirement to include the commission's contact information on each bill and, instead, to only require such information be provided to the customer twice each year.

The commission declines to modify adopted subsection (i)(4) (formerly subsection (j)(4)) as proposed by SBC because a customer cannot control when an unauthorized charge is going to appear on their bill. Therefore, the information required by adopted subsection (i)(4) must be available on every bill upon which it is possible to incur unauthorized charges.

*Proposed Subsection (k), Complaints to the commission*

To maintain consistency in the rule, SBC and OPUC suggested that the term "telecommunications utility," as used in proposed subsection (k), should be changed to refer to both service providers and billing utilities. In its reply comments, MCI agreed with SBC and OPUC.

The commission agrees with SBC, MCI, and OPUC and, in accord with PURA §§17.156(a), 17.156(b), 64.156(a), and 64.156(b), modifies the proposed rule to refer to service providers, billing utilities, and billing agents.

Verizon and SBC recommended amending proposed subsection (k) to require the commission's Customer Protection Division (CPD) to forward the complaint filed by the customer to the service provider alleged to have crammed the customer because it is unduly burdensome and costly for the billing telecommunications utility to play "middle-man" by coordinating the actual service provider's response to CPD. Moreover, Verizon continued, the billing telecommunications utility does not have the documentation required by proposed subsections (f) and (g).

The commission has modified and adopted subsection (j)(2) (formerly subsection (k)(2)) to clarify that the entity to which CPD forwards the complaint must provide a response that includes, to the extent it is within its custody or control, all information required by adopted subsection (j)(2).

The commission, however, does not agree to amend the rule as suggested by Verizon and SBC. PURA Chapters 17 and 64, require service providers, billing agents, and billing utilities to maintain and provide to the commission, upon request, certain records relating to charges placed on a customer's telephone bill. These chapters also specify the responsibilities of billing utilities and service providers in the event a customer's telephone bill is charged without proper authorization and verification of authorization. For example, a billing utility is specifically required by §17.152(a)(1) and (4), and §64.152(a)(1) and (4), upon its knowledge or notification, to notify the service provider to cease charging the customer for an unauthorized product or service and provide the customer with all billing records under its control. The commission believes the rule is consistent with PURA Chapters 17 and 64. Moreover, the commission is not inclined to assume the costs, or to risk potential accusations, as the "middle-man" since the commission may have ultimate responsibility to seek remedies against a service provider, billing agent or billing telecommunications utility against whom the complaint was lodged.

SBC suggested modifying the reference in proposed subsection (k)(2)(B) from "switch in service" to avoid confusion between this rule and the slamming rules.

The commission agrees with SBC and accordingly modifies and adopts subsection (j)(2)(B) (formerly subsection (k)(2)(B)).

MCI, AT&T, and SBC suggested, consistent with their comments in the slamming portion of this rulemaking, revising the 21-day requirement in subsections (k)(2) and (3), and (l)(1) and (2), to 30 days, and expressly providing for a good-cause extension as permitted by §26.3 of this title. MCI, AT&T, and SBC urged also, that a provider's failure to comply timely with commission requests for record production should not presumed to be a cram. These commenters asserted that this portion of the rule would result in a denial of due process. The commenters asserted that failure to produce records should only be considered a failure to timely produce records and should not be considered as a cramming violation.

The commission declines to change the deadline within which billing utilities, service providers, and billing agents must respond to the commission. Pursuant to the commission's existing rules, P.U.C. PROC. R. 22.242(d), commission staff is required to attempt to resolve all complaints within 35 days of the date of receipt of the complaint. Unless parties provide the required information sufficiently in advance of the 30th day after the request, commission staff would not have sufficient time to resolve all complaints within the 35-day goal established by commission rule. Accordingly, the commission declines to modify the existing rule as proposed by some of the commenters.

The commission declines to create an exception to the proposed rule as suggested by some commenters. P.U.C. SUBST. R. 26.30(b) of the commission's rules currently requires companies to investigate a complaint forwarded to it by the commission and to advise the commission in writing of the results of its investigation within 21 days.

In addition, the commission believes that the deletion of proposed subsection (f) and the creation of a single-step process for verification of consent substantially reduce the evidence necessary for a service provider to produce to demonstrate compliance with this rule. Therefore, the failure of a service provider to provide the commission with this single item of evidence during the investigation of complaints is a cramming violation that does not result in a denial of due process.

Finally, the commission notes that most commission-regulated companies are required to be familiar with the commission's "21-day" rules and generally do respond in a timely manner to complaints forwarded to them by the commission. The requirements in adopted subsection (j) serve to better define the appropriate and expected scope of a company's response when information is requested by the commission. Accordingly, the commission declines to modify proposed subsection (k), adopted in subsection (j), as suggested by these commenters.

Based upon the comments to, and discussion about, proposed subsection (k) adopted as subsection (j), the commission moves proposed subsection (k)(3) to adopted subsection (k) as new subsection (k)(3). The commission also modifies the text of that subsection to refer to the appropriate subsections of this rule necessitated by that move.

*Proposed Subsection (l), Compliance and enforcement*

TTA stated that proposed subsections (l)(1) and (2) subject a billing telecommunications utility or service provider to the burden of providing proof of documentation and records to the commission. TTA argued that the rule should not be broad enough to allow enforcement actions against a billing agent that simply makes billing changes per the service provider's request.

The commission makes no changes to proposed subsections (l)(1) and (2) based upon the suggestion of TTA. PURA §17.155 and §64.155 require billing utilities and service providers to provide certain records to the commission upon request. PURA §17.156 and §64.156 subject billing utilities, service providers, and billing agents to enforcement for violations of cramming prohibitions. Subsections (l)(1) and (2) adopted in subsections (k)(1) and (2) are consistent with PURA.

OPUC recommended amending proposed subsections (l)(1) and (l)(2) to require that records produced under these subsections be provided to OPUC in addition to commission staff. OPUC asserted that such an amendment was necessary in its statutory role as the representative of residential and small commercial customers, including its ability to evaluate the need for petitioning the commission to initiate an enforcement action.

MCI opposed OPUC's recommendation to amend proposed subsections (l)(1) and (2) so that OPUC gains access to the records maintained by the commission. MCI argued that PURA §§17.155, 17.156, 64.155, and 64.156 grant solely to the commission the record request and enforcement authority related to cramming issues. Moreover, MCI continued, OPUC's jurisdiction is set forth at PURA §13.003 and is limited to the

same access as a party, other than commission staff, to records gathered by the commission under §14.204. Accordingly, MCI explained that OPUC's request is not authorized by statute.

The commission generally agrees with MCI's analysis and declines, therefore, to amend proposed subsections (l)(1) and (2) as recommended by OPUC. This provision is intended to ensure that the commission and commission staff have adequate ability to obtain the information necessary to monitor compliance with commission rules and effectively conduct enforcement activities when necessary pursuant to authority given to the commission by PURA. The commission notes that OPUC, in the exercise of its "statutory role as the representative of residential and small commercial customers," on a case by case basis, is entitled to request the information required by proposed subsection (l)(1) and (l)(2), adopted in subsections (k)(1) and (2).

MCI, Sprint, Verizon, AT&T, and SBC, in its reply comments, opposed, for similar reasons to those they propounded in the slamming portion of this rule project, the language in subsection (l)(5) that permits customer affidavits that challenge a charge as evidence of a cramming violation.

The OAG supported proposed subsection (l)(5) and stated that probably the most important and effective single change proposed by these rules is the allowance of customer affidavits as evidence of cramming violations. Because the Administrative Procedure Act (APA), specifically, Texas Government Code §2001.081, allows for a more expansive approach to evidentiary issues, the OAG noted that it should not always be necessary to require a customer's presence at hearing to prove a cramming violation. Indeed, the OAG stated, such requirement would be counter-productive because most customers would not take on the time or burden required for such a proceeding, particularly when the financial burden to them could easily outweigh the benefit. Moreover, the OAG observed, the standard in the proposed rule is to only admit an affidavit that meets the requirements of APA §2001.081. Accordingly, the OAG concluded, the proposed rule should be adopted to promote effective enforcement efforts.

The commission disagrees that proposed subsection (l)(5) predetermines the admissibility of a customer affidavit in a proceeding to enforce the commission's cramming rules. Because a customer affidavit is not presumptively admitted into evidence against a company accused of cramming, the proposed rule does not infringe upon such a company's due process rights.

Customer affidavits are not presumptively admitted into evidence against a company in a proceeding to enforce the commission's cramming rules. As noted by the OAG, proposed subsection (l)(5), adopted in subsection (k)(5), specifically identifies customer affidavits as information the commission believes *may* be admissible pursuant to the more expansive approach to evidentiary issues allowed by APA §2001.081. Pursuant to this proposed rule, a customer affidavit, to be admitted into evidence in the absence at hearing of the customer who made the affidavit, must meet the requirements set out in APA 2001.081. Accordingly, the proponent seeking to admit the customer affidavit must demonstrate that it is: (1) necessary to ascertain facts not reasonably susceptible to proof under the rules of evidence as applied in a nonjury civil case in a district court of Texas; (2) not precluded by statute; and (3) of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs. Any party opposing admission of the customer affidavit may argue that one or more of these elements have not been satisfied by the proponent and, if successful, prevent admission of the affidavit.

However, as explained below in more detail, the commission finds that a customer affidavit is the type of evidence that is appropriate for admission pursuant to APA §2001.081 in a proceeding to enforce the commission's slamming rules.

First, the evidence described by proposed subsection (l)(5), adopted in subsection (k)(5), is necessary to ascertain facts that are not likely reasonably susceptible to proof because it is generally too costly for customers and the commission to require attendance by the customer at an enforcement proceeding related to slamming. The commission interprets the phrase "not reasonably susceptible to proof" as a reference to the ease with which the facts may be proved under the rules of evidence. How long it would take and how much it would cost to prove an issue are, therefore, relevant factors in determining whether some fact at issue is "reasonably susceptible of proof." In most cramming cases, the economic harm to the customer caused by the cram will be far outweighed by the cost of attending a hearing in Austin, Texas. Attendance at a hearing in Austin would, in most instances, require the customer to incur un-reimbursed expenses, including, but not necessarily limited to, lodging, meals, and travel. In addition, attending a hearing in Austin would require customers with daytime jobs to take time off from work. The commission does not have budgeted funds to pay witnesses' expenses. Under these circumstances, the commission believes a customer will rarely choose to come to Austin to testify in a cramming case.

Next, the commission is not aware of any statute that specifically precludes admitting customer affidavits in slamming cases.

Finally, the customer affidavits contemplated in the proposed rule are the type on which staff experts who testify about slamming complaints at this commission rely. Staff experts commonly rely on a variety of information to determine whether a cram occurred, including the customer's complaint, whether affirmed or not, and the carrier's response to that complaint. Therefore, the commission finds that a customer affidavit is the type of evidence that should be admissible as contemplated by APA §2001.081.

Some commenters also suggested that customer affidavits were not admissible pursuant to APA §2001.081 because the affiant could easily be deposed by the commission or ordered to appear at the hearing by telephone. The commission disagrees. Cramming enforcement proceedings share many characteristics of mass litigation (the complainant usually suffers only minor monetary losses and temporary service interruptions, but the complainant may be one of hundreds or thousands of similarly situated customers). The commission does not have the budget or manpower necessary to attend and conduct depositions of so many complainants, many of whom may live great distances from Austin. Also, telephonic participation may be reasonable for one or two witnesses, but because cramming proceedings can involve hundreds of customers, telephonic participation potentially presents substantial and unreasonable logistical difficulties, for the customers, the commission, the carrier and the ALJ, relating to scheduling an order of presentation for each customer, their appropriate contact telephone number and the specific time each customer will appear. Therefore, the costs to the customer and to the commission of pursuing such alternatives to attendance at a cramming enforcement proceeding will generally far

outweigh any benefit they may provide. Accordingly, the commission disagrees that either of these methods of customer attendance will be reasonable in all enforcement proceedings related to cramming.

Moreover, carriers' due process concerns are not infringed by proposed subsection (l)(5), adopted in subsection (k)(5) of the rule. First, carriers may object and assert that one or more of the elements of APA §2001.081 have not been demonstrated by commission staff. Second, nothing in the proposed rule eliminates a carrier's ability to depose a customer who has submitted an affidavit or to seek compulsory attendance at the proceeding by that customer. Finally, a carrier may conduct discovery, depose, and cross- examine the commission's testifying expert about the basis for that expert's opinion, including the customer affidavits, if such were relied upon by the expert.

The commission also notes that the content of customer affidavits is admissible through the testimony of the commission's staff expert. Pursuant to Texas Rules of Evidence 703 and 705, the staff expert may rely on customer affidavits as the basis for his or her testimony and may disclose on direct, or must disclose on cross, the facts or data, including those affidavits, that form the basis of the commission staff's opinion. Therefore, even if the customer affidavits are not admitted pursuant to APA §2001.081, those affidavits are properly the subject of the staff expert's testimony.

Sprint recommended deleting proposed subsection (l)(6) because allowing the commission to suspend, restrict or revoke the registration or certificate of a billing telecommunications utility is exceptionally severe.

The commission derives this authority, and the wording for the proposed rule, from PURA §17.156(d) and §64.156(d) (relating to Violations). Since the remedies are identical to those found in PURA, the commission declines to modify proposed subsection (l)(6) as adopted in subsection (k)(7) of the rule.

**16 TAC §26.32**

This repeal is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2004) (PURA) which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including Chapter 17, Customer Protection, Subchapter D, Protection Against Unauthorized Charges, §§17.151, *et seq.*; Chapter 64, Customer Protection, Subchapter A, Customer Protection Policy, §64.001 which confers on the commission authority to adopt and enforce rules to protect customers from fraudulent, unfair, misleading, deceptive, or anticompetitive practices, and Subchapter D, Protection Against Unauthorized Charges, §§64.151, *et seq.* Further, PURA §52.002, grants the commission "exclusive original jurisdiction over the business and property of a telecommunications utility in this state subject to the limitations imposed by this title."

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.151-17.158, 52.001, 52.002, 64.001, and 64.151-64.158.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 26, 2004.

TRD-200405401

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: September 15, 2004
Proposal publication date: February 27, 2004
For further information, please call: (512) 936-7223

♦ ♦ ♦

**16 TAC §26.32**

This new section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2004) (PURA) which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including Chapter 17, Customer Protection, Subchapter D, Protection Against Unauthorized Charges, §§17.151, *et seq.*; Chapter 64, Customer Protection, Subchapter A, Customer Protection Policy, §64.001 which confers on the commission authority to adopt and enforce rules to protect customers from fraudulent, unfair, misleading, deceptive, or anticompetitive practices, and Subchapter D, Protection Against Unauthorized Charges, §§64.151, *et seq.* Further, PURA §52.002, grants the commission "exclusive original jurisdiction over the business and property of a telecommunications utility in this state subject to the limitations imposed by this title."

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.151-17.158, 52.001, 52.002, 64.001, and 64.151-64.158.

*§26.32. Protection Against Unauthorized Billing Charges ("Cramming").*

(a) Purpose. The provisions of this section are intended to ensure that all customers in this state are protected from unauthorized charges on a customer's telecommunications utility bill. This section establishes the requirements necessary to obtain and verify customer consent for charges for any product or service before the associated charges appear on the customer's telephone bill.

(b) Application. This section applies to all "billing agents," "billing telecommunications utilities," and "service providers" as those terms are defined in §26.5 of this title (relating to Definitions) or the Public Utility Regulatory Act (PURA). This section does not apply to:

(1) an unauthorized change in a customer's local or long distance service provider, which is addressed in §26.130 of this title (relating to Selection of Telecommunications Utilities);

(2) message telecommunications charges that are initiated by dialing 1+, 0+, 0-, 1010XXX, or collect calls and charges for video services, if the service provider has the necessary call record detail to establish the billing for the call or service; and

(3) a provider of commercial mobile radio service as defined in PURA §51.003(5).

(c) Definition. The term "customer," when used in this section, shall mean the account holder, including the account holder's spouse, in whose name telephone service is billed, including individuals, governmental units at all levels of government, corporate entities, and any other entity or person with legal capacity to request to be billed for telephone service.

(d) Requirements for billing authorized charges. No service provider or billing agent shall submit charges for any product or service for billing on a customer's telephone bill before complying with all of the following requirements:

(1) Inform the customer. The service provider offering the product or service shall thoroughly inform the customer of the product or service being offered, including all associated charges for the product or service, and shall inform the customer that the associated charges for the product or service will appear on the customer's telephone bill.

(2) Obtain customer consent. The service provider shall obtain clear and explicit consent, verified pursuant to subsection (f) of this section, from the customer to obtain the product or service being offered and to have the associated charges appear on the customer's telephone bill. A record of the customer's verified consent shall be maintained by the service provider offering the product or service for at least 24 months immediately after the verified consent was obtained.

(3) Provide contact information. The service provider offering the product or service, and any billing agent for the service, shall provide the customer with a toll-free telephone number that the customer may call, and an address to which the customer may write, to resolve any billing dispute and to obtain answers to any questions.

(4) Provide business information. The service provider (other than the billing telecommunications utility) and its billing agent shall provide the billing telecommunications utility with its name, business address, and business telephone number.

(5) Obtain billing telecommunications utility authorization. The service provider and its billing agent shall execute a written agreement with the billing telecommunications utility to bill for products or services on the billing telecommunications utility's telephone bill. Record of this agreement shall be maintained by:

(A) the service provider;

(B) any billing agent for the service provider; and

(C) the billing telecommunications utility for as long as the billing for the product or service continues and for the 24 months immediately following the permanent discontinuation of the billing.

(e) Post-termination billing. A service provider shall not bill a customer for a product or service after the termination or cancellation date for that product or service unless the bill is for a product or service provided prior to the termination or cancellation date; or the service provider subsequently obtains customer consent and verification of that consent pursuant to this section.

(f) Verification requirements.

(1) Verification of a customer's consent for an order of a product or service must include:

(A) the date of customer consent;

(B) the date of customer verification of consent;

(C) the name and telephone number of the customer; and

(D) the exact name of the service provider as it will appear on the customer's bill.

(2) Verification of a customer's consent for an order of a product or service may not include discussion of any incentives that were or may have been offered by the service provider and shall be limited, without explanation, to the identification of:

(A) each offered product or service;

(B) applicable charges;

(C) how a product or service can be cancelled, including any charges associated with terminating the product or service; and

(D) how the charge will appear on the customer's telephone bill.

(3) During any communication with a customer to verify that customer's consent for a product or service, the independent third-party verifier or the sales representative, shall, after sufficient inquiry to ensure that the customer is authorized to order the product or service, obtain the explicit customer acknowledgment that charges for the product or service ordered by the customer will be assessed on the customer's telephone bill.

(4) Except in customer-initiated transactions with a certificated telecommunications utility for which the service provider has the appropriate documentation obtained pursuant to section (d), verification of customer consent to an order for a product or service shall be verified by one or more of the following methods:

(A) Written or electronically signed documentation.

*(i)* Written or electronically signed verification of consent shall be a separate document containing only the information required by paragraphs (1) and (2) of this subsection for the sole purpose of verifying the consent for a product or service on the customer's telephone bill. A customer shall be provided the option of using another form of verification in lieu of an electronically signed verification.

*(ii)* The document shall be signed and dated by the customer. Any electronically signed verification shall include the customer disclosures required by the *Electronic Signatures in Global and National Commerce Act* §101(c).

*(iii)* The document shall not be combined with inducements of any kind on the same document, screen or webpage.

*(iv)* If any portion of the document, screen or webpage is translated into another language, then all portions of the document shall be translated into that language. Every document shall be translated into the same language as any promotional materials, oral descriptions, or instructions provided with the document, screen or webpage.

(B) Toll-free electronic verification placed from the telephone number that is the subject of the product or service, except in exchanges where automatic number identification (ANI) from the local switching system is not technically possible. The service provider must:

*(i)* ensure that the electronic verification confirms the information required by paragraphs (1) and (2) of this subsection for the sole purpose of verifying the customer's consent for a product or service on the customer's telephone bill; and

*(ii)* establish one or more toll-free telephone numbers exclusively for the purpose of verifying the customer consent of charges for the product(s) or service(s) so that the customer calling the toll- free number(s) will reach a voice response unit or similar mechanism regarding the customer consent for the product(s) or service(s) and automatically records the ANI from the local switching system.

*(iii)* Automated systems shall provide customers the option of speaking with a live person at any time during the call.

(C) Voice recording by service provider.

*(i)* The recorded conversation with a customer shall be in a clear, easy-to-understand, slow, and deliberate manner and shall contain the information required by paragraphs (1) and (2) of this subsection.

*(ii)* The recording shall be clearly audible.

*(iii)* The recording shall include the entire and actual conversation with the customer on audio tape, a wave sound file, or other recording device that is compatible with the commission's equipment.

*(iv)* The recording shall be dated and include clear and conspicuous confirmation that the customer consented to recording the conversation and authorized the charges for a product or service on the customer's telephone bill.

(D) Independent Third Party Verification. Independent third party verification of consent shall meet the following requirements:

*(i)* Verification shall be given to an independent and appropriately qualified third party with no participation by a service provider, except as provided in clause (vii) of this subparagraph.

*(ii)* Verification shall be recorded.

*(iii)* The recorded conversation with a customer shall contain explicit customer consent to record the conversation, be in a clear, easy-to-understand, slow, and deliberate manner and shall comply with each of the requirements of paragraphs (1) and (2) of this subsection for the sole purpose of verifying the customer's consent of the charges for a product or service on the customer's telephone bill.

*(iv)* The recording shall be clearly audible.

*(v)* The independent third party verification shall be conducted in the same language used in the sales transaction.

*(vi)* Automated systems shall provide customers the option of speaking with a live person at any time during the call.

*(vii)* A service provider or its sales representative initiating a three-way call or a call through an automated verification system shall disconnect from the call once a three-way connection with the third party verifier has been established unless the service provider meets the following requirements:

*(I)* the service provider files sworn written certification with the commission that the sales representative is unable to disconnect from the sales call after initiating third party verification. Such certification should provide sufficient information describing the reason(s) for the inability of the sales agent to disconnect from the line after the third party verification is initiated. The service provider shall be exempt from this requirement for a period of two years from the date the certification was filed with the commission;

*(II)* the service provider seeking to extend its exemption from this clause must, before the end of the two-year period, and every two years thereafter, recertify to the commission its continued inability to comply with this clause.

*(III)* The independent third party verification shall immediately terminate if the sales agent of an exempt service provider, pursuant to sub clause (I) of this clause, responds to a customer inquiry, speaks after third party verification has begun, or in any manner prompts one or more of the customer's responses.

*(viii)* The independent third party shall:

*(I)* not be owned, managed, directed or directly controlled by the service provider or the service provider's marketing agent;

*(II)* not have financial incentive to verify the consent to charges; and

*(III)* operate in a location physically separate from the service provider or the service provider's marketing agent.

*(ix)* The recording shall include the entire and actual conversation with the customer on audio tape, a wave sound file, or other recording device that is compatible with the commission's equipment.

*(x)* The recording shall be dated and include clear and conspicuous confirmation that the customer authorized the charges for a product or service on the customer's telephone bill.

(5) Any other verification method approved by the FCC.

(6) A record of the verification required by subsection (f) of this section shall be maintained by the service provider offering the product or service for at least 24 months immediately after the verification was obtained from the customer.

(g) Expiration of consent and verification.

(1) If a customer consents to obtain a product or service but that product or service is not provisioned within 60 calendar days from the date of customer consent:

(A) The customer's consent is null and void, and

(B) Before the charge may appear on the customer's bill, the service provider must obtain new consent and verification of that new consent in accordance with this section.

(2) Paragraphs (1)(A) and (B) of this subsection do not apply to verification of consent relating to multi-line and/or multi-location business customers that have entered into negotiated agreements with a service provider for a product or service provisioned under and during the term specified in the agreement. The verified consent shall be valid for the period specified in the agreement.

(h) Unauthorized charges.

(1) Responsibilities of the billing telecommunications utility for unauthorized charges. If a customer's telephone bill is charged for any product or service without proper customer verified consent in compliance with this section, the telecommunications utility that billed the customer, on its knowledge or notification of any unauthorized charge, shall promptly, but not later than 45 calendar days after the date of the knowledge or notification of an unauthorized charge meet the following requirements:

(A) A billing utility shall:

*(i)* notify the service provider to immediately cease charging the customer for the unauthorized product or service;

*(ii)* remove the unauthorized charge from the customer's bill;

*(iii)* refund or credit to the customer all money that has been paid by the customer for any unauthorized charge, and if any unauthorized charge that has been paid is not refunded or credited within three billing cycles, shall pay interest at an annual rate established by the commission pursuant to §26.27 of this title (relating to Bill Payment and Adjustments) on the amount of any unauthorized charge until it is refunded or credited;

*(iv)* on the customer's request, provide the customer with all billing records under its control related to any unauthorized charge within 15 business days after the date of the removal from the customer's telephone bill;

*(v)* provide the service provider with the date the customer requested that the unauthorized charge be removed from the customer's bill and the dates of the actions required by clauses (ii) and (iii) of this subparagraph, and

*(vi)* maintain for at least 24 months a record of every customer who has experienced any unauthorized charge for a product or service on the customer's telephone bill and has notified the billing telecommunications utility of the unauthorized charge. The record shall contain for each alleged unauthorized charge:

*(I)* the name of the service provider that offered the product or service;

*(II)* the affected telephone number(s) and addresses;

*(III)* the date each customer requested that the billing telecommunications utility remove the unauthorized charge from the customer's telephone bill;

*(IV)* the date the unauthorized charge was removed from the customer's telephone bill; and

*(V)* the date the customer was refunded or credited any money that the customer paid for the unauthorized charges.

(B) A billing telecommunications utility shall not:

*(i)* suspend or disconnect telecommunications service to any customer for nonpayment of an unauthorized charge; or

*(ii)* file an unfavorable credit report against a customer who has not paid charges that the customer has alleged were unauthorized unless the dispute regarding the unauthorized charges is ultimately resolved against the customer. The customer shall remain obligated to pay any charges that are not in dispute, and this paragraph does not apply to those undisputed charges.

(2) Responsibilities of the service provider for unauthorized charges. The service provider responsible for placing any unauthorized charge on a customer's telephone bill shall:

(A) immediately cease billing upon notice from the customer or the billing telecommunications utility for a product or service that a charge for such product or service has not been authorized by the customer;

(B) for at least 24 months following the completion of all of the steps required by paragraph (1)(A) of this subsection, maintain a record for every disputed charge for a product or service on the customer's telephone bill. Each record shall contain:

*(i)* the affected telephone number(s) and addresses;

*(ii)* the date the customer requested that the billing telecommunications utility remove the unauthorized charge from the customer's telephone bill;

*(iii)* the date the unauthorized charge was removed from the customer's telephone bill; and

*(iv)* the date that action was taken to refund or credit to the customer any money that the customer paid for the unauthorized charges; and

(C) not resubmit any unauthorized charge to the billing telecommunications utility for any past or future period.

(i) Notice of customer rights.

(1) Each notice provided as set out in paragraph (2) of this subsection shall also contain the billing telecommunications utility's name, address, and a working, toll-free telephone number for customer contacts.

(2) Every billing telecommunications utility shall provide the following notice, verbatim, to each of the utility's customers:
Figure: 16 TAC §26.32(i)(2)

(3) Distribution and timing of notice.

(A) Each billing telecommunications utility shall mail the notice as set out in paragraph (2) of this subsection to each of its residential and business customers within 60 calendar days after the effective date of this section, or by inclusion in the next publication of the utility's telephone directory following 60 calendar days after the effective date of this section. In addition, each billing telecommunications utility shall send the notice to new customers at the time service is initiated and on any customer's request.

(B) Every telecommunications utility that prints its own telephone directories shall print the notice in the white pages of such directories, in nine point print or larger, beginning with the first publication of the directories after 60 calendar days following the effective date of this section; thereafter, the notice must appear in the white pages of each telephone directory published by or for the telecommunications utility.

(4) Any bill sent to a customer from a telecommunications utility must include a statement, prominently located in the bill, that if the customer believes the bill includes unauthorized charges, the customer may contact: Public Utility Commission of Texas, PO Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

(5) Each billing telecommunications utility shall make available to its customers the notice as set out in paragraph (2) of this subsection in both English and Spanish as necessary to adequately inform the customer; however, the commission may exempt a billing telecommunications utility from the requirement that the information be provided in Spanish upon application and a showing that 10% or fewer of its customers are exclusively Spanish-speaking, and that the billing telecommunications utility will notify all customers through a statement in both English and Spanish, as an addendum to the notice, that the information is available in Spanish from the telecommunications utility, both by mail and at the utility's offices.

(6) The customer notice requirements in paragraphs (1) and (2) of this subsection may be combined with the notice requirements of §26.130(g)(3) of this title if all of the information required by each is in the combined notice.

(7) The customer notice requirements in paragraph (4) of this subsection may be combined with the notice requirements of §26.130(i)(4) of this title if all of the information required by each is in the combined notice.

(j) Complaints to the commission. A customer may file a complaint with the commission's Customer Protection Division (CPD) against a service provider, billing agent or billing telecommunications utility for any reasons related to the provisions of this section.

(1) Customer complaint information. CPD may request, at a minimum, the following information:

(A) the customer's name, address, and telephone number;

(B) a brief description of the facts of the complaint;

(C) a copy of the customer's and spouse's legal signature; and

(D) a copy of the most recent phone bill and any prior phone bill that shows the alleged unauthorized product or service.

(2) Service provider's, billing agent's or billing utility's response to complaint. After review of a customer's complaint, CPD shall forward the complaint to the service provider, billing agent or

billing telecommunications utility named in that complaint. The service provider, billing agent or telecommunications utility shall respond to CPD within 21 calendar days after CPD forwards the complaint. The response shall include, to the extent it is within the custody or control of the service provider, billing agent or billing telecommunications utility, the following:

(A) all documentation related to verification of customer consent used to charge the customer for the product or service; and

(B) all corrective actions taken as required by subsection (h) of this section, if the customer's consent for the charge for the product or service was not verified in accordance with subsection (f) of this section.

(k) Compliance and enforcement.

(1) Records of customer verifications. A service provider, billing agent or billing telecommunications utility shall provide a copy of records maintained under the requirements of subsections (d) and (f) of this section to the commission staff within 21 calendar days of a request for such records.

(2) Records of disputed charges. A billing telecommunications utility or a service provider shall provide a copy of records maintained under the requirements of subsection (h) of this section to the commission staff within 21 calendar days of a request for such records.

(3) Failure to provide thorough response. The proof of verified consent as required pursuant to subsection (j)(2)(A) of this section must establish a valid authorized charge as defined by subsection (f) of this section. Failure to timely submit a response that addresses the complainant's assertions within the time specified in subsections (j)(2), (k)(1), and (k)(2) of this section establishes a violation of this section.

(4) Administrative penalties. If the commission finds that a billing telecommunications utility has violated any provision of this section, the commission shall order the utility to take corrective action, as necessary, and the utility may be subject to administrative penalties and other enforcement actions pursuant to PURA, Chapter 15 and §22.246 of this title (relating to Administrative Penalties).

(5) Evidence. Evidence provided by the customer that meets the standards set out in Texas Government Code §2001.081, including, but not limited to, one or more affidavits from a customer challenging the charge, is admissible in a proceeding to enforce the provisions of this section.

(6) Additional Corrective Action. If the commission finds that any other service provider or billing agent subject to PURA, Chapter 17, Subchapter D, or Chapter 64, Subchapter D, has violated any provision of this section or has knowingly provided false information to the commission on matters subject to PURA, Chapter 17, Subchapter D, or Chapter 64, Subchapter D, the commission shall order the service provider or billing agent to take corrective action, as appropriate, and the commission may enforce the provisions of PURA, Chapter 15 and §22.246 of this title, against the service provider or billing agent as if the service provider or billing agent were regulated by the commission.

(7) Certificate suspension, restriction or revocation. If the commission finds that a billing telecommunications utility or a service provider has repeatedly violated this section, and if consistent with the public interest, the commission may suspend, restrict, or revoke the registration or certificate of the telecommunications service provider, thereby denying the service provider the right to provide service in this state. The commission may not revoke a certificate of convenience and necessity of a telecommunications utility except as provided by PURA §54.008.

(8) Termination of billing and collection services. If the commission finds that a service provider or billing agent has repeatedly violated any provision of PURA, Chapter 17, Subchapter D, or Chapter 64, Subchapter D, the commission may order the billing utility to terminate billing and collection services for that service provider or billing agent.

(9) Coordination with Office of Attorney General. The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, unfair, misleading, deceptive, and anticompetitive business practices with the Office of the Attorney General in order to ensure consistent treatment of specific alleged violations.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 26, 2004.

TRD-200405402
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: September 15, 2004
Proposal publication date: February 27, 2004
For further information, please call: (512) 936-7223

♦ ♦ ♦

# PART 9. TEXAS LOTTERY COMMISSION

## CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

## SUBCHAPTER E. RETAILER RULES

### 16 TAC §401.362

The Texas Lottery Commission adopts amendments to 16 TAC §401.362 relating to the retailer's financial responsibility for lottery tickets received, for winning lottery tickets paid and for lottery-related property without changes to the proposed text as published in the July 16, 2004, issue of the *Texas Register* (29 TexReg 6864).

The purpose of the amendments is to clarify each retailer's fiduciary obligations with respect to lottery tickets received, lottery tickets received and subsequently damaged, for prizes paid, and general financial obligations for lottery-related property. In order to clarify the retailer's fiduciary obligations and general financial obligations, the amendments delete references to stolen or lost tickets and the financial treatment of such tickets, clarify that a retailer receives an accounting for packs of unactivated tickets instead of a credit, clarify that report of damaged tickets is made to the commission's lottery operations division instead of the security division, and provide that the director may waive the administrative fee for damaged unactivated packs instead of activated packs.

The Commission received comment during the comment period. Specifically, comment was received from one commenter at a public hearing the Commission conducted to receive comments on July 27, 2004 at 10:00 am at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 E. Sixth Street, Austin, Texas. The commenter indicated that, currently, retailers are being charged a $25 fee when a pack of tickets is lost or stolen and

the commenter believes that the fee is a financial burden that the retailer has to absorb for no apparent reason. The commenter indicated that if a fee needs to be charged, he's not sure that $25 is a fair fee. The commenter believes it costs a lot less than $25 to print a pack of tickets. Additionally, the commenter indicated that the Commission needs to consider the rewarding of retailers that redeem tickets that were sold at other retailer locations. The commenter indicated that he is not making any money on the sale and is carrying the financial burden for redeeming the tickets. The commenter indicated that he is not seeing a positive financial impact. The commenter also indicated the Commission consider a financial reward to retailers that go above and beyond the call of duty in promoting the lottery and are continuously in the top ten percentile of sales. The commenter suggested a tiered commission rate for retailers. The commenter would like to see some financial impact on their bottom line. Agency response: In connection with this rulemaking, the comment regarding the $25 fee charged to a retailer for a pack of tickets the retailer received but was subsequently lost or stolen placing a financial burden on the retailer for no apparent reason is not relevant. This rulemaking does not relate to lost or stolen tickets. A rulemaking regarding the assessment of a $25 fee for lost or stolen tickets occurred at the same time as this rulemaking. The comment hearing covered both this rulemaking and the rulemaking regarding a retailer's financial responsibilities relating to lost or stolen tickets. The agency provided a response in connection with this comment as it related to the rulemaking regarding a retailer's financial responsibilities relating to lost or stolen tickets. However, as it relates to damaged tickets, the agency's response is that the retailer has taken possession of the tickets and has a responsibility to safeguard the tickets. Tx. Govt. Code Section 466.353 provides that a sales agent is liable to the division for all tickets accepted or generated by the sales agent and tickets shall be deemed to have been purchased by the sales agent unless returned to the division within the time and manner prescribed by the division. The Commission has identified circumstances under which it is reasonable to assess a fee to offset the Commission's expenses in the event tickets accepted by the sales agent have been damaged. The Commission has identified both direct and indirect costs associated with unactivated tickets accepted by the sales agent that are subsequently damaged. Direct costs include ticket manufacturing, and administrative staff time to review facts associated with damaged ticket incidents and to update Commission records. Indirect costs include warehousing and shipping of tickets and administrative costs associated with the lottery operator staff. The Commission believes that the $25 fee is reasonable in light of the costs to the Commission and a desire by the Commission to provide an incentive to its retailers to safeguard the tickets. The additional comment provided by the commenter regarding the Commission consider rewarding retailers who redeem tickets that were sold at other locations and a tiered commission rate for retailers is not relevant to the scope of this rulemaking. Furthermore, the concept of a cashing bonus was the subject of a prior proposed rule. Comment received in connection with that rulemaking indicated that the Commission consider the negative fiscal impact to the State. No rule was adopted in connection with that rulemaking.

One group or association that commented was Speedy Stop Food Stores. The individual commenting as a representative of Speedy Stop Food Stores did not indicate support for or opposition to the proposed rule.

The rule is adopted pursuant to Texas Government Code, §466.015 which authorizes the Texas Lottery Commission to adopt rules necessary to administer the State Lottery Act and rules governing the operation of the lottery and pursuant to Texas Government Code, §467.102 which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The rule implements Government Code, Chapter 466.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405414
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: September 16, 2004
Proposal publication date: July 16, 2004
For further information, please call: (512) 344-5113

### 16 TAC §401.370

The Texas Lottery Commission adopts new rule 16 TAC §401.370 relating to the retailer's financial responsibility for lottery tickets received and subsequently stolen or lost without changes to the proposed text as published in the July 16, 2004, issue of the *Texas Register* (29 TexReg 6865).

The purpose of the rule is to set out the retailer's financial responsibility for lottery tickets received by the retailer and subsequently stolen or lost. In order to identify the retailer's financial responsibility related to such lottery tickets, the new rule defines terms that are used to identify the status of instant tickets in a pack and clarify what charges, if any, will be assessed against a retailer for stolen or lost tickets in a particular status. For each category of tickets, the new rule sets out the procedure the retailers will be required to follow in order to obtain a credit on the retailer's account in the event of stolen or lost tickets. Additionally, the commission anticipates a reduction in the financial burden for retailers that experience a business loss from theft and other causes outside of their control. While it is anticipated that the implementation of the rule will have some negative impact on the generation of revenue as the financial liability for stolen or lost tickets shifts from retailers to the Commission, it is also anticipated that the rule will, over time, maintain or reduce potential loss overall revenue by enhancing a licensed retailer's ability to maintain inventory levels or make a larger number of lottery instant games available for sale due to the reduction in the financial risk to which retailers are exposed. It is also anticipated that the generation of revenue will be enhanced through the retention of licensed retailers who may have otherwise discontinued their participation as retailers or defaulted in payment to the Commission and subsequently lost their licenses because of the financial requirements they must meet under 16 TAC §401.362.

The commission received comment during the comment period. Specifically, comment was received from one commenter at a public hearing the Commission conducted to receive comments on July 27, 2004 at 10:00 am at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 E. Sixth Street, Austin, Texas. The commenter indicated that, currently, retailers are being charged a $25 fee when a pack of tickets is lost or stolen and the commenter believes that the fee is a financial burden that the

retailer has to absorb for no apparent reason. The commenter indicated that if a fee needs to be charged, he's not sure that $25 is a fair fee. The commenter believes it costs a lot less than $25 to print a pack of tickets. Additionally, the commenter indicated that the Commission needs to consider the rewarding of retailers that redeem tickets that were sold at other retailer locations. The commenter indicated that he is not making any money on the sale and is carrying the financial burden for redeeming the tickets. The commenter indicated that he is not seeing a positive financial impact. The commenter also indicated the Commission consider a financial reward to retailers that go above and beyond the call of duty in promoting the lottery and are continuously in the top ten percentile of sales. The commenter suggested a tiered commission rate for retailers. The commenter would like to see some financial impact on their bottom line. Agency response: The commission disagrees with the comment that the $25 fee charged to a retailer for a pack of tickets the retailer received but was subsequently lost or stolen places a financial burden on the retailer for no apparent reason. The retailer has taken possession of the tickets and has a responsibility to safeguard the tickets from loss. Tx. Govt. Code Section 466.353 provides that a sales agent is liable to the division for all tickets accepted or generated by the sales agent and tickets shall be deemed to have been purchased by the sales agent unless returned to the division within the time and manner prescribed by the division. The Commission has identified circumstances under which it is reasonable to assess a fee to offset the Commission's expenses in the event tickets accepted by the sales agent have been lost or stolen. The Commission has identified both direct and indirect costs associated with unactivated tickets that are accepted by the sales agent that are subsequently lost or stolen. Direct costs include ticket manufacturing, and administrative and investigative staff time required to review facts associated with stolen or lost tickets and to update Commission records. Indirect costs include warehousing and shipping of tickets and administrative costs associated with the lottery operator staff time. The Commission believes that the $25 fee is reasonable in light of the costs to the Commission and a desire by the Commission to provide an incentive to its retailers to safeguard the tickets. The additional comment provided by the commenter regarding the Commission consider rewarding retailers who redeem tickets that were sold at other locations and a tiered commission rate for retailers is not relevant to the scope of this rulemaking. Furthermore, the concept of a cashing bonus was the subject of a prior proposed rule. Comment received in connection with that rulemaking indicated that the Commission consider the negative fiscal impact to the State. No rule was adopted in connection with that rulemaking.

One group or association that commented was Speedy Stop Food Stores. The individual commenting as a representative of Speedy Stop Food Stores did not indicate support for or opposition to the proposed rule.

The rule is adopted pursuant to Texas Government Code, §466.015 which authorizes the Texas Lottery Commission to adopt rules necessary to administer the State Lottery Act and rules governing the operation of the lottery and pursuant to Texas Government Code, §467.102 which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The rule implements Government Code, Chapter 466.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405415
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: December 1, 2004
Proposal publication date: July 16, 2004
For further information, please call: (512) 344-5113

♦ ♦ ♦

## CHAPTER 402. BINGO REGULATION AND TAX

### 16 TAC §402.520

The Texas Lottery Commission adopts new rule 16 TAC §402.520 relating to temporary licenses without changes to the proposed text as published in the July 16, 2004, issue of the *Texas Register* (29 TexReg 6867). The purpose of the new rule is to clarify for licensees and the general public the precise requisites for conducting charitable bingo under a temporary license. In order to clarify these factors for licensees and the general public, the new rule defines terms, provides the requirements for obtaining a temporary bingo license, and sets the standards for conducting bingo under a temporary license.

No comments were received.

No group or association indicated support for or opposition to the proposed new rule.

The new rule is adopted under Occupations Code, §2001.054 which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, under Government Code, §467.102 which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction, under Occupations Code, §2001.051(b) which grants the Commission broad authority to exercise strict control and close supervision over all bingo conducted in Texas so that bingo is fairly conducted and the proceeds derived from bingo are used for an authorized purpose, and under Occupations Code, §2001.103 which provides for the issuance of a temporary license to conduct bingo.

The new rule implements Occupations Code, Chapter 2001.103.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405422
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: September 16, 2004
Proposal publication date: July 16, 2004
For further information, please call: (512) 344-5113

♦ ♦ ♦

# TITLE 22. EXAMINING BOARDS

## PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

### CHAPTER 133. LICENSING
### SUBCHAPTER G. EXAMINATIONS

**22 TAC §133.69**

The Texas Board of Professional Engineers adopts an amendment to §133.69, relating to Waiver of Examinations, without changes to the proposed text as published in the July 16, 2004, issue of the *Texas Register* (29 TexReg 6875) and will not be republished. The adopted amendment clarifies language concerning waiver requirements for applicants with a Ph.D.

The current rule concerning waivers of examination for applicants with a Ph.D. outlines the experience requirements for those with teaching experience or a combination of teaching experience and creditable engineering experience. It is the intent of the board to also allow applicants with a Ph.D. and only creditable engineering experience to be considered for the waiver process. The adopted amendment provides for applicants with creditable engineering experience and no teaching experience to apply for a waiver of examinations.

No comments were received regarding the board's adoption of the amended sections.

The amendment is adopted pursuant to the Texas Engineer Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance if its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and pursuant to the Texas Engineering Practice Act. Occupations Code §1001.305 of the Act, which delegates to the board the authority to set the requirements for a waiver of examination.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405476
Paul Cook
Assistant Executive Director
Texas Board of Professional Engineers
Effective date: September 19, 2004
Proposal publication date: July 16, 2004
For further information, please call: (512) 440-7723

♦ ♦ ♦

### CHAPTER 137. COMPLIANCE AND PROFESSIONALISM
### SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

**22 TAC §137.17**

The Texas Board of Professional Engineers adopts an amendment to §137.17, relating to the Continuing Education Program, without changes to the proposed text as published in the July 16, 2004, issue of the *Texas Register* (29 TexReg 6876) and will not be republished. The adopted amendment clarifies language to simplify the procedure for reporting Continuing Education requirements.

The current rule concerning the Continuing Education Program reporting requirements states that each activity, date, and number of hours must be reported with each renewal. To simplify the process of requirement reporting, the adopted rule modifies the requirements to include only a certification by the license holder that Continuing Education requirements have been satisfied.

No comments were received regarding the board's adoption of the amended sections.

The amendment is adopted pursuant to the Texas Engineer Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance if its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and pursuant to the Texas Engineering Practice Act, Occupations Code §1001.210 of the Act, which delegates to the board the authority to set requirements for a Continuing Education Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405477
Paul Cook
Assistant Executive Director
Texas Board of Professional Engineers
Effective date: September 19, 2004
Proposal publication date: July 16, 2004
For further information, please call: (512) 440-7723

♦ ♦ ♦

## PART 14. TEXAS OPTOMETRY BOARD

### CHAPTER 277. PRACTICE AND PROCEDURE

**22 TAC §277.2**

The Texas Optometry Board adopts amendments to §277.2 without changes to the proposed text as published in the June 25, 2004, issue of the *Texas Register* (29 TexReg 6029) and will not be republished.

The amendment includes specific procedures for imposing a default judgment against a party in a contested case who does not appear at a scheduled informal conference or administrative hearing. The additional procedures insure that the party in a contested case receives adequate notice. The proposed amendment clarifies the agency's ability to issue a default judgment as permitted by the Administrative Procedures Act and the rules of the State Office of Administrative Hearings, 1 TAC Chapter 155.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.507, and 351.503, and Texas Government Code §2001.056 and §2003.050.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets §351.507 as requiring rules regarding informal conferences and the informal disposition of contested cases, §351.503 to permit a party in a contested case to obtain an administrative hearing, §2001.056 as authorizing default judgments in informal conferences and §2003.050 as requiring the State Office of Administrative Hearings to adopt procedural rules.

No other sections are affected by these amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405464
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: September 19, 2004
Proposal publication date: June 25, 2004
For further information, please call: (512) 305-8502

♦ ♦ ♦

## CHAPTER 279. INTERPRETATIONS

**22 TAC §279.2, §279.6**

The Texas Optometry Board adopts amendments to §279.2 and new §279.6 without changes to the proposed text as published in the June 25, 2004, issue of the *Texas Register* (29 TexReg 6030) and will not be republished.

The amendment notifies the public and licensees that the some sections of the rule may be in conflict with recently enacted federal law, 15 U.S.C. Sections 7601 - 7610 (Public Law 108-164), and refers all parties to new §279.6.

The new rule informs the public and licensees of the possible conflicts between §279.2 of this title with recently enacted federal law, 15 U.S.C. Sections 7601 - 7610 (Public Law 108-164).

No comments were received regarding adoption of the amendment and the new section.

The amendment is adopted under the Texas Optometry Act, Texas Occupations Code, §351.151, with references to federal law, 15 U.S.C. Sections 7601 - 7610.

The new rule is adopted under the Texas Optometry Act, Texas Occupations Code, §351.151, and the Contact Lens Prescription Act, Texas Occupations Code, §§353.101, 353.103, 353.152, 353.156 and 353.204, and federal law, 15 U.S.C. Sections 7601 - 7610.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets 15 U.S.C. Sections 7601 - 7610 as requiring licensees to issue contact lens prescriptions at the completion of a contact lens exam, and the verification of prescriptions when requested by a dispenser authorized by the patient to obtain the verification. The agency interprets §§353.101, 353.103, 353.152, 353.156 as setting up a comprehensive scheme to regulate the prescribing and dispensing of contact lenses, and §353.204 as authorizing the agency to discipline optometrists and therapeutic optometrists for violations of the Contact Lens Prescription Act.

No other sections are affected by the amendment and new section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405463
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: September 19, 2004
Proposal publication date: June 25, 2004
For further information, please call: (512) 305-8502

♦ ♦ ♦

# PART 19. POLYGRAPH EXAMINERS BOARD

## CHAPTER 391. POLYGRAPH EXAMINER INTERNSHIP

**22 TAC §391.10**

The Polygraph Examiners Board adopts an amendment to §391.10, concerning Polygraph Examiner Internship, without changes to the proposed text as published in the June 11, 2004, issue of the *Texas Register* (29 TexReg 5710).

The section is being amended to change punctuation and a legal citation.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405475
Frank DiTucci
Executive Director
Polygraph Examiners Board
Effective date: September 19, 2004
Proposal publication date: June 11, 2004
For further information, please call: (512) 388-2138

♦ ♦ ♦

# PART 27. BOARD OF TAX PROFESSIONAL EXAMINERS

## CHAPTER 623. REGISTRATION AND CERTIFICATION

**22 TAC §623.14**

The Board of Tax Professional Examiners adopts an amendment to §623.14, concerning Certification and Recertification: General, without changes to the proposed text as published in the July 16, 2004, issue of the *Texas Register* (29 TexReg 6877).

No comments were received on the proposed amendment.

The amendment is adopted under the authority of Texas Civil Statutes Occupations Code, Chapter 1151 Property Taxation Professional Certification Act, which provides the Board of Tax Professional Examiners with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405461
David E. Montoya
Executive Director
Board of Tax Professional Examiners
Effective date: September 19, 2004
Proposal publication date: July 16, 2004
For further information, please call: (512) 305-7300

♦ ♦ ♦

## CHAPTER 629. PENALTIES, SANCTIONS, AND HEARINGS

**22 TAC §629.4**

The Board of Tax Professional Examiners adopts an amendment to §629.4, concerning Penalties, Sanctions, and Hearings, without changes to the proposed text as published in the July 23, 2004, issue of the *Texas Register* (29 TexReg 7030).

No comments were received on the proposed amendment.

The amendment is adopted under the authority of Texas Civil Statutes Occupations Code, Chapter 1151 Property Taxation Professional Certification Act, which provides the Board of Tax Professional Examiners with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405460
David E. Montoya
Executive Director
Board of Tax Professional Examiners
Effective date: September 19, 2004
Proposal publication date: July 23, 2004
For further information, please call: (512) 305-7300

♦ ♦ ♦

**22 TAC §629.6**

The Board of Tax Professional Examiners adopts an amendment to §629.6, concerning Hearing Procedure (Suspension or Revocation) , without changes to the proposed text as published in the July 16, 2004, issue of the *Texas Register* (29 TexReg 6877).

No comments were received on the proposed amendment.

The amendment is adopted under the authority of Texas Civil Statutes Occupations Code, Chapter 1151 Property Taxation Professional Certification Act, which provides the Board of Tax Professional Examiners with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405459
David E. Montoya
Executive Director
Board of Tax Professional Examiners
Effective date: September 19, 2004
Proposal publication date: July 16, 2004
For further information, please call: (512) 305-7300

♦ ♦ ♦

# TITLE 30. ENVIRONMENTAL QUALITY

## PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

## CHAPTER 50. ACTION ON APPLICATIONS AND OTHER AUTHORIZATIONS
## SUBCHAPTER F. ACTION BY THE COMMISSION

**30 TAC §50.113**

The Texas Commission on Environmental Quality (commission) adopts the amendment to §50.113. Section 50.113 is adopted *without change* to the proposed text as published in the April 9, 2004, issue of the *Texas Register* (29 TexReg 3586), and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

This rulemaking adds two new types of applications to a listing of applications that the commission may act on without holding a contested case hearing. This listing is in §50.113(d).

There are two separate reasons for the adopted amendment.

First, the adopted amendment to §50.113(d)(5) implements House Bill (HB) 2567, 78th Legislature, 2003, which amended the Texas Water Code (TWC) by adding new §27.021. HB 2567 allows the commission to issue a permit to dispose of brine produced by a desalination operation in a Class I injection well without providing a contested case hearing under TWC, §27.018, as long as all requirements for a Class I injection well permit are met. This rulemaking does not affect public notice of a permit application, opportunity to comment on a permit application, or the opportunity for a public meeting on a permit application under 30 TAC §55.154. The public meeting provisions of §55.154 satisfy the public hearing provisions of 40 Code of Federal Regulations (CFR) §124.12.

HB 2567 may expedite the approval of Class I injection well permits for the disposal of desalination brine by removing the potential for a contested case hearing under the provisions of TWC, §27.018. TWC, §27.021(b) establishes a notice and comment process for applications for the disposal of brine in Class I injection wells. It further sets forth that notwithstanding TWC, §27.018, this type of application is not subject to the hearing requirements of Texas Government Code, Chapter 2001. However, HB 2567 did not address the commission's discretionary authority to hold a hearing under its general powers.

If desalination brine is hazardous, and the applicant wishes to dispose of the hazardous waste in a Class I well, then the well (and in most cases the surface facility) must be permitted by the commission. In addition, the applicant is subject to the United States Environmental Protection Agency's (EPA's) regulations regarding a no-migration demonstration.

This rulemaking does not affect hearings on applicants that seek authorization to dispose of desalination brine through methods other than Class I injection wells. Other options for disposal of nonhazardous desalination brine include Class V injection wells, evaporation ponds, and surface discharge under a Texas Pollutant Discharge Elimination System permit. 30 TAC §331.11(a) limits Class V wells to disposal of nonhazardous wastes. Disposal of nonhazardous waste through the use of a Class V injection well can be authorized by rule or by a site-specific permit, subject to certain water quality limitations. Authorizations by rule are not subject to hearings, while site-specific permits for Class V wells are subject to the hearing request process provided under Chapter 55.

Second, the adopted amendment that adds §50.113(d)(6) updates the list of applications that are not subject to a contested case hearing by adding applications for pre-injection unit registrations. Pre-injection unit registrations were created by a previous rulemaking in the January 3, 2003 issue of the *Texas Register* (28 TexReg 340). The rules for pre-injection unit registrations, which can be found in 30 TAC §331.17 and §331.18, do not provide for contested case hearings. This amendment updates the list of applications that the commission may act on without holding a contested case hearing.

Changes to 30 TAC Chapters 55, 305, and 331 are also adopted in this issue of the *Texas Register* to implement HB 2567.

SECTION DISCUSSION

The adopted amendment to §50.113(d) adds two new types of applications to the current list of applications that the commission may act on without holding a contested case hearing. The first addition, applications for Class I injection well permits used only for the disposal of desalination brine, is added to existing paragraph (5). This first item implements TWC, §27.021. The second addition, applications for pre-injection unit registrations, is inserted in new paragraph (6). This second change aligns the list with provisions of a previous rulemaking. In addition, the language in existing paragraph (5) relating to other types of applications is moved to new paragraph (7).

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225. The commission determined that this amendment is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This adopted amendment does not meet the definition of a "major environmental rule" because the specific intent of the rule is to add language to the procedural rules to provide that an application for a Class I injection well for the disposal of brine produced by a desalination operation and an application for a pre-injection unit registration are not subject to a contested case hearing. This amendment substantially advances this purpose by providing under §50.113(d) that the application for a Class I injection well for the disposal of desalination brine is not subject to a contested case hearing, and by adding applications for pre-injection unit registrations to the list of applications not subject to a contested case hearing. This amendment does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs because the amendment simply conforms the procedural rule for applications not subject to a contested case hearing to the statute. This amendment is not anticipated to adversely affect in a material way the environment or the public health and safety of the state or a sector of the state because the permit for a Class I injection well for the disposal of desalination brine must meet all the statutory and regulatory requirements for issuance of a permit for a Class I injection well and because the provision relating to applications for pre-injection units reflects existing rules and does not adversely affect these interests.

In addition, the adopted rulemaking does not exceed the four applicability requirements of Texas Government Code, §2001.0225(a) because the rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or seek to adopt a rule solely under the general powers of the agency.

The adopted amendment does not exceed a standard set by federal law because there are no corresponding federal standards requiring a contested case hearing on an application for a Class I injection well permit or a pre-injection unit registration. Furthermore, the amendment does not exceed an express requirement of state law because the exemption for Class I wells that dispose of brine produced by a desalination operation is mandated by state law, and because no state law expressly requires a contested case hearing on pre-injection unit registrations. In addition, the amendment does not exceed any requirement of the delegation agreement concerning injection wells because the delegation agreement does not establish express requirements for a contested case hearing for the issuance of a Class I injection well permit for the disposal of brine from a desalination operation

and because the delegation agreement does not address pre-injection unit registrations. Finally, the amendment is not adopted solely under the general powers of the agency but is adopted under the specific provisions of TWC, §27.019 and §27.021.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted amendment and performed an assessment of whether the amendment constitutes a taking under Texas Government Code, §2007.043.

The specific purpose of the adopted amendment is to revise the list in §50.113(d) so it reflects recent amendments to the TWC and conforms to current rules. The amendment adds two applications to the list of applications that are not subject to contested case hearings: first, applications for permits to dispose of brine produced by desalination operations in Class I injection wells, and second, applications for pre-injection unit registrations.

The adopted amendment substantially advances the previously stated purpose by providing that the permit procedures for Class I injection wells for the disposal of brine produced by desalination operations and the procedures for pre-injection unit registrations do not provide for a contested case hearing.

The adopted amendment does not impose any burden on private real property and does not result in any benefit to society from the use of private real property because the amendment does not directly apply to the ownership or use of private real property.

Promulgation and enforcement of the amendment will not be a statutory or constitutional taking of private real property because the amendment does not apply to the ownership or use of private real property. The amendment does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond any reduction in value that would otherwise exist in the absence of the adopted amendment.

The commission has no reasonable alternative actions that could accomplish the specified purpose of revising the list in §50.113(d) so it reflects recent amendments to the TWC and conforms to current rules. Without the adopted amendment, the list of applications that are not subject to opportunities for contested case hearings would remain outdated.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council. This rulemaking is a procedural change that allows the commission to issue a permit to dispose of brine produced by a desalination operation in a Class I injection well without providing a contested case hearing under TWC, §27.018. The commission determined that the amendment is consistent with CMP goals and policies because the rulemaking is a procedural change that does not modify any of the requirements for the permitting of this kind of disposal, and the amendment therefore does not have a direct or significant adverse effect on any coastal natural resource areas, nor does it have a substantive effect on commission actions subject to the CMP. Promulgation and enforcement of the amendment does not violate or exceed any standards identified in the applicable CMP goals and policies.

PUBLIC COMMENT

The comment period ended May 10, 2004. Two written comments were received: one from the EPA, Region 6, and another from the commission's Office of Public Interest Counsel (OPIC). EPA suggested changes to the rulemaking but did not indicate support of or opposition to the rule. OPIC indicated support of the rule.

RESPONSE TO COMMENTS

EPA recommends modifying the preamble to include language that clarifies that the opportunity to comment and request a public meeting, as described in §55.154 and 40 CFR §124.12, is not affected by the rulemaking.

The preamble has been modified to address this concern by stating that this rulemaking does not affect the opportunity to comment on a permit application or the opportunity to request a public meeting under §55.154. The preamble also states that the public meeting provisions of §55.154 satisfy the public hearing provisions of 40 CFR §124.12.

EPA recommends that the rulemaking explicitly state that permit applications for Class V wells for the disposal of waste from desalination operations are still subject to the opportunity for a contested case hearing. EPA also recommends identifying the state rules that prohibit the use of Class V wells for the injection of hazardous waste.

The preamble has been modified to clarify that disposal of nonhazardous waste through the use of a Class V injection well can be authorized by rule or by a site-specific permit. The preamble also adds that this rulemaking does not affect hearings for a site-specific permit application that seeks authorization to dispose of desalination brine in a Class V injection well. This rulemaking does not impact authorizations by rule for Class V injection wells for disposal of desalination brine because authorizations by rule are not subject to the public hearing request process. The preamble also states that §331.11(a) limits Class V wells to disposal of nonhazardous wastes.

EPA recommends that the rulemaking clarify that applicants applying for a permit to dispose of hazardous waste from desalination operations in a Class I well must file a Land Ban no-migration petition with EPA.

The preamble has been modified to address this concern by stating that if desalination brine is hazardous, and the applicant wishes to dispose of it in a Class I well, then the well (and in most cases the surface facility) must be permitted by the commission, and the applicant is also subject to EPA's regulations regarding a no-migration demonstration.

EPA also recommends that the rulemaking clarify that, in cases involving hazardous waste from desalination operations, no exception to the opportunity for contested case hearings will be granted.

The legislature did not differentiate between hazardous and nonhazardous waste when it enacted TWC, §27.021. Under TWC, §27.021, all Class I underground injection control permit applications for the disposal of desalination brine, whether hazardous or nonhazardous, are subject to public notice and comment procedures but are not subject to a contested case hearing under TWC, §27.018.

The EPA is recommending that the commission continue to make some permits issued under TWC, §27.021 subject to a contested case hearing. This recommendation exceeds the requirements of the EPA's federal rules for underground injection control. The federal rules require a public hearing under 40 CFR §124.12 but do not require a contested case hearing.

The commission's public meeting requirements in §55.154 satisfy the federal public hearing requirements (40 CFR §124.12). Public meetings provide an opportunity for public input and anyone can participate in a public meeting, but only affected parties may participate in a contested case hearing.

No change has been made in response to this comment.

OPIC supports adoption of the rule and supports the recognition in the preamble that the rule changes do not affect the commission's discretionary authority to hold a hearing if the commission determines that a hearing is in the public interest. OPIC also agrees that the language added by HB 2567 does not remove the power of the commission to hold a hearing under TWC, §5.102(b). OPIC stated that the language added by HB 2567 does not remove the power of the commission to hold a hearing under TWC, §27.018. Moreover, OPIC stated that TWC, §27.021 does not exempt desalination injection well permit applications from the power of the commission to grant a hearing in the public interest under TWC, §27.018(a).

The commission appreciates the support for this rulemaking.

Under TWC, §27.021(b), permit applications authorized by TWC, §27.021 are not subject to the hearing provisions in TWC, §27.018. The first sentence of TWC, §27.021(b) provides for public notice and comment. The second sentence of TWC, §27.021(b) states that an application authorized by §27.021 is not subject to the hearing requirements of Texas Government Code, Chapter 2001, notwithstanding §27.018. The language contained in TWC, §27.021(b) means that permits issued under §27.021 are subject to public notice and comment procedures and are not subject to the hearing provisions under §27.018.

HB 2567 did not address the commission's discretionary authority to hold a hearing under its general powers. No change has been made in response to this comment.

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.021, which provides that permits for disposal of brine produced by desalination operations are not subject to the hearing requirements of §27.018 and Texas Government Code, Chapter 2001. The pre-injection unit registration amendment is also adopted under Texas Health and Safety Code, §361.017 and §361.024, which provide the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act; and under Texas Health and Safety Code, §401.051, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Radiation Control Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405409

Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: September 16, 2004
Proposal publication date: April 9, 2004
For further information, please call: (512) 239-6087

♦ ♦ ♦

## CHAPTER 55. REQUESTS FOR RECONSIDERATION AND CONTESTED HEARINGS; PUBLIC COMMENT

The Texas Commission on Environmental Quality (commission) adopts the amendments to §55.101 and §55.201. Section 55.101 and §55.201 are adopted *with changes* to the proposed text as published in the April 9, 2004, issue of the *Texas Register* (29 TexReg 3586), and will be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

There are three separate reasons for the adopted amendments.

First, the adopted amendments to §55.101(f)(4) and §55.201(i)(6) implement House Bill (HB) 2567, 78th Legislature, 2003, which amended the Texas Water Code (TWC) by adding new §27.021. HB 2567 allows the commission to issue a permit to dispose of brine produced by a desalination operation in a Class I injection well without a contested case hearing under TWC, §27.018, as long as all requirements for a Class I injection well permit are met. This rulemaking does not affect public notice of a permit application, opportunity to comment on a permit application, or the opportunity to request a public meeting on a permit application under §55.154. The public meeting provisions of §55.154 satisfy the public hearing provisions of 40 Code of Federal Regulations §124.12.

HB 2567 may expedite the approval of Class I injection well permits for the disposal of desalination brine by removing the potential for a contested case hearing under the provisions of TWC, §27.018. TWC, §27.021(b) establishes a notice and comment process for applications for the disposal of brine in Class I injection wells. It further sets forth that notwithstanding TWC, §27.018, this type of application is not subject to the hearing requirements of Texas Government Code, Chapter 2001. However, HB 2567 did not address the commission's discretionary authority to hold a hearing under its general powers.

If desalination brine is hazardous, and the applicant wishes to dispose of the hazardous waste in a Class I well, then the well (and in most cases the surface facility) must be permitted by the commission. In addition, the applicant is subject to the United States Environmental Protection Agency's (EPA's) regulations regarding a no-migration demonstration.

This rulemaking does not affect hearings on applications that seek authorization to dispose of desalination brine through methods other than Class I injection wells. Other options for disposal of nonhazardous desalination brine include Class V injection wells, evaporation ponds, and surface discharge under a Texas Pollutant Discharge Elimination System permit. 30 TAC §331.11(a) limits Class V wells to disposal of nonhazardous wastes. Disposal of nonhazardous waste through the use of a Class V injection well can be authorized by rule or by a site-specific permit, subject to certain water quality limitations. Authorizations by rule are not subject to hearings, while

site-specific permits for Class V wells are subject to the hearing request process provided under Chapter 55.

Second, the adopted amendment to §55.101(g)(11) and the addition of §55.201(i)(7) updates the list of applications that are not subject to a contested case hearing by adding applications for pre-injection unit registrations. Pre-injection unit registrations were created by a previous rulemaking in the January 3, 2003, issue of the *Texas Register* (28 TexReg 340). The rules for pre-injection unit registrations, which can be found in 30 TAC §331.17 and §331.18, do not provide for contested case hearings.

Third, the adopted amendment to §55.101(f)(4) removes applications for weather modification licenses or permits from the list of applications that are not subject to a contested case hearing because the commission no longer administers the weather modification licensing and permitting program. Senate Bill (SB) 1175, 77th Legislature, 2001 transferred all powers, duties, obligations, rights, records, employees, and property that are used to administer the weather modification licensing and permitting program from the commission to the Texas Department of Licensing and Regulation. Additionally, SB 1175 transferred all powers, duties, obligations, rights, contracts, records, property, and unspent and unobligated appropriations and other funds used to administer the weather modification grant program to the Texas Department of Agriculture. The commission repealed the majority of the rules regarding weather modification in the March 1, 2002, issue of the *Texas Register* (27 TexReg 1498).

Changes to 30 TAC Chapters 50, 305, and 331 are also adopted in this issue of the *Texas Register* to implement HB 2567.

SECTION BY SECTION DISCUSSION

The adopted amendment to §55.101, Applicability, updates the lists in subsections (f) and (g). Subsection (f) contains a list of applications and exemptions and provides that the hearing requests related to those applications and exemptions are not subject to the provisions of Chapter 55, Subchapters D - G. Subsection (g) contains a list of applications and permits that are not subject to Subchapters D - G. In subsection (f), the adopted amendment deletes paragraph (4), which references weather modification licenses or permits. These licenses or permits are no longer regulated by the commission. The adopted amendment also adds applications for Class I injection well permits used only for the disposal of desalination brine as new paragraph (4). In subsection (g), the adopted amendment adds applications for pre-injection unit registrations to existing paragraph (11), and the existing language in paragraph (11) will move to new paragraph (12).

The adopted amendment to §55.201, Requests for Reconsideration or Contested Case Hearing, updates subsection (i), which contains the list of applications for which there is no right to a contested case hearing. Two applications are added to the list. First, applications for Class I injection well permits used only for the disposal of brine from desalination operations are added to paragraph (6), and the existing language under paragraph (6) is added to new paragraph (8). Second, applications for pre-injection unit registrations are added to new paragraph (7). This second change updates the list so that it conforms to previous adoptions.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225. The commission determined that the adopted amendments are not subject to §2001.0225 because they do not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments do not meet the definition of "major environmental rule" because the specific intent of the amendments is to update the procedural rules to provide that an application for a Class I injection well for the disposal of brine produced by a desalination operation and an application for a pre-injection unit registration are not subject to a contested case hearing, and to remove an outdated reference to weather modification. The rules substantially advance this purpose by providing under §55.201(i) that the application for a Class I injection well for the disposal of desalination brine is not subject to a contested case hearing, by adding applications for pre-injection unit registrations to the list of matters not subject to a contested case hearing, and by removing a reference to weather modification licenses or permits. The adopted rules do not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs because the rules simply conform the procedural rule for applications not subject to a contested case hearing to the statute. The amendments are not anticipated to adversely affect in a material way the environment or the public health and safety of the state or a sector of the state because the permit for a Class I injection well for the disposal of desalination brine must meet all the statutory and regulatory requirements for issuance of a permit for a Class I injection well and because the provision relating to applications for pre-injection units reflects existing rules and does not adversely affect these interests.

In addition, the amendments do not exceed the four applicability requirements of Texas Government Code, §2001.0225(a), because the adopted rules do not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or seek to adopt a rule solely under the general powers of the agency.

The amendments do not exceed a standard set by federal law because there are no corresponding federal standards requiring a contested case hearing on an application for a Class I injection well permit, a pre-injection unit registration, or a weather modification license or permit. Furthermore, the amendments do not exceed an express requirement of state law because the exemption for Class I wells that dispose of brine produced by a desalination operation is mandated by state law, because no state law expressly requires a contested case hearing on pre-injection unit registrations, and because state law expressly moved the weather modification program from the commission to the Texas Department of Licensing and Regulation. In addition, the amendments do not exceed any requirement of the delegation agreement concerning injection wells because the delegation agreement does not establish express requirements for a contested case hearing for the issuance of a Class I injection well permit for the disposal of brine from a desalination operation and because the delegation agreement does not address pre-injection unit registrations or weather modification licenses or permits. Finally, the amendments are not adopted solely under the general powers of the agency but are adopted under the specific provisions of TWC, §27.019 and §27.021.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted amendments and performed an assessment of whether the amendments constitute a taking under Texas Government Code, §2007.043.

The specific purpose of the rulemaking is to revise the lists in §55.101 and §55.201 so they reflect the following: recent amendments to TWC, §27.021, current rules regarding pre-injection unit registrations, and the transfer of the weather modification licensing and permitting program away from the commission.

In §55.101, the rulemaking revises subsections (f) and (g). Subsection (f) contains a list of applications and exemptions not subject to hearing requests under Subchapters D - G. In subsection (f), the rulemaking adds applications for Class I injection well permits used only for the disposal of desalination brine and removes applications for weather modification licenses or permits because the commission no longer administers the weather modification licensing and permitting program. Subsection (g) contains a list of applications and permits not subject to Subchapters D - G. In subsection (g), the rulemaking adds applications for pre-injection unit registrations.

In §55.201, the rulemaking revises the list in subsection (i), which contains the list of applications for which there is no right to a contested case hearing. The rulemaking adds applications for Class I injection well permits used only for the disposal of brine from desalination operations and applications for pre-injection unit registrations to subsection (i).

The rulemaking substantially advances the previously stated purposes by providing that the permit procedures for Class I injection wells for the disposal of brine produced by desalination operations and the procedures for pre-injection unit registrations do not provide for a contested case hearing under TWC, §27.018, and by removing applications for weather modification licenses or permits from the list in §55.10.

The amendments do not impose any burden on private real property and do not result in any benefit to society from the use of private real property because the amendments do not directly apply to the ownership or use of private real property.

Promulgation and enforcement of the amendments will not be a statutory or a constitutional taking of private real property because the amendments do not apply to ownership or use of private real property. The amendments do not burden, restrict, or limit an owners right to property, or reduce its value by 25% or more beyond any reduction in value that would otherwise exist in the absence of the adopted amendments.

The commission has no reasonable alternative actions that could accomplish the specified purposes of revising the lists in §55.101 and §55.201 so they reflect recent amendments to the TWC and conform to current rules. Without the adopted amendments, these lists would remain outdated.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council. This rulemaking is a procedural change that allows the commission to issue a permit to dispose of brine produced by a desalination operation in a Class I injection well without providing a contested case hearing under TWC, §27.018. The commission determined that the amendments are consistent with CMP goals and policies because the rulemaking is a procedural change that does not modify any of the requirements for the permitting of this kind of disposal, and the amendments therefore do not have a direct or significant adverse effect on any coastal natural resource areas, nor do they have a substantive effect on commission actions subject to the CMP. Promulgation and enforcement of the amendments does not violate or exceed any standards identified in the applicable CMP goals and policies.

PUBLIC COMMENT

The comment period ended May 10, 2004. Two written comments were received: one from EPA, Region 6, and another from the commission's Office of Public Interest Counsel (OPIC). EPA suggested changes to the rulemaking but did not indicate support of or opposition to the rules. OPIC indicated support of the rules.

RESPONSE TO COMMENTS

EPA recommends modifying the preamble to include language that clarifies that the opportunity to comment and request a public meeting, as described in §55.154 and 40 CFR §124.12, is not affected by the rulemaking.

The preamble has been modified to address this concern by stating that this rulemaking does not affect the opportunity to comment on a permit application or the opportunity to request a public meeting under §55.154. The preamble also states that the public meeting provisions of §55.154 satisfy the public hearing provisions of 40 CFR §124.12.

EPA recommends that the rulemaking explicitly state that permit applications for Class V wells for the disposal of waste from desalination operations are still subject to the opportunity for a contested case hearing. EPA also recommends identifying the state rules that prohibit the use of Class V wells for the injection of hazardous waste.

The preamble has been modified to clarify that disposal of nonhazardous waste through the use of a Class V injection well can be authorized by rule or by a site-specific permit. The preamble also adds that this rulemaking does not affect hearings for a site-specific permit application that seeks authorization to dispose of desalination brine in a Class V injection well. This rulemaking does not impact authorizations by rule for Class V injection wells for disposal of desalination brine because authorizations by rule are not subject to the public hearing request process. The preamble also states that §331.11(a) limits Class V wells to disposal of nonhazardous wastes.

EPA recommends that the rulemaking clarify that applicants applying for a permit to dispose of hazardous waste from desalination operations in a Class I well must file a Land Ban no-migration petition with EPA.

The preamble has been modified to address this concern by stating that if desalination brine is hazardous, and the applicant wishes to dispose of it in a Class I well, then the well (and in most cases the surface facility) must be permitted by the commission, and the applicant is also subject to EPA's regulations regarding a no-migration demonstration.

EPA also recommends that the rulemaking clarify that, in cases involving hazardous waste from desalination operations, no exception to the opportunity for contested case hearings will be granted.

The legislature did not differentiate between hazardous and nonhazardous waste when it enacted TWC, §27.021. Under TWC,

§27.021, all Class I underground injection control permit applications for the disposal of desalination brine, whether hazardous or nonhazardous, are subject to public notice and comment procedures but are not subject to a contested case hearing under TWC, §27.018.

The EPA is recommending that the commission continue to make some permits issued under TWC, §27.021 subject to a contested case hearing. This recommendation exceeds the requirements of the EPA's federal rules for underground injection control. The federal rules require a public hearing under 40 CFR §124.12 but do not require a contested case hearing.

The commission's public meeting requirements in §55.154 satisfy the federal public hearing requirements (40 CFR §124.12). Public meetings provide an opportunity for public input and anyone can participate in a public meeting, but only affected parties may participate in a contested case hearing.

No change has been made in response to this comment.

OPIC supports adoption of the rule and supports the recognition in the preamble that the rule changes do not affect the commission's discretionary authority to hold a hearing if the commission determines that a hearing is in the public interest. OPIC also agrees that the language added by HB 2567 does not remove the power of the commission to hold a hearing under TWC, §5.102(b). OPIC stated that the language added by HB 2567 does not remove the power of the commission to hold a hearing under TWC, §27.018. Moreover, OPIC stated that TWC, §27.021 does not exempt desalination injection well permit applications from the power of the commission to grant a hearing in the public interest under TWC, §27.018(a).

The commission appreciates the support for this rulemaking.

Under TWC, §27.021(b), permit applications authorized by TWC, §27.021 are not subject to the hearing provisions in TWC, §27.018. The first sentence of TWC, §27.021(b) provides for public notice and comment. The second sentence of TWC, §27.021(b) states that an application authorized by §27.021 is not subject to the hearing requirements of Texas Government Code, Chapter 2001, notwithstanding §27.018. The language contained in TWC, §27.021(b) means that permits issued under §27.021 are subject to public notice and comment procedures and are not subject to the hearing provisions under §27.018.

HB 2567 did not address the commission's discretionary authority to hold a hearing under its general powers. No change has been made in response to this comment.

## SUBCHAPTER D. APPLICABILITY AND DEFINITIONS

**30 TAC §55.101**

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.021, which provides that permits for disposal of brine produced by desalination operations are not subject to the hearing requirements of §27.018 and Texas Government Code, Chapter 2001. The pre-injection unit registration amendment is also adopted under Texas Health and Safety Code, §361.017 and §361.024, which provide the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act; and under Texas Health and Safety Code, §401.051, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Radiation Control Act.

*§55.101. Applicability.*

(a) Subchapters D - G of this chapter (relating to Applicability and Definitions; Public Comment and Public Meetings; Requests for Reconsideration or Contested Case Hearing; and Requests for Contested Case Hearing and Public Comment on Certain Applications) apply to permit applications that are declared administratively complete on or after September 1, 1999, as specified in subsections (b) - (g) of this section.

(b) Subchapters D - G of this chapter apply to public comments, public meetings, hearing requests, and requests for reconsideration.

(c) Subchapters D - F of this chapter apply only to applications filed under Texas Water Code, Chapters 26 and 27 and Texas Health and Safety Code, Chapters 361 and 382.

(d) Subchapter G of this chapter applies to all applications other than those listed in subsection (e) of this section and other than those filed under Texas Water Code, Chapters 26 and 27 and Texas Health and Safety Code, Chapters 361 and 382.

(e) Subchapters D - F of this chapter apply to applications for amendment, modification, or renewal of air quality permits that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. The commission may not seek further public comment or hold a public hearing under the procedures provided by §39.419 of this title (relating to Notice of Application and Preliminary Decision), §55.156 of this title (relating to Public Comment Processing), and Subchapter F of this chapter for such applications. The commission may hold a contested case hearing if the application involves a facility for which the applicant's compliance history contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations.

(f) Subchapters D - G of this chapter do not apply to hearing requests related to:

(1) applications for emergency or temporary orders;

(2) applications for temporary or term permits for water rights;

(3) air quality exemptions from permitting and permits by rule under Chapter 106 of this title (relating to Exemptions from Permitting) except for construction of concrete batch plants which are not temporarily located contiguous or adjacent to a public works project;

(4) applications for Class I injection well permits used only for the disposal of desalination brine under Texas Water Code, §27.021, concerning Permit for Disposal of Brine From Desalination Operations in Class I Wells; and

(5) applications where the opportunity for a contested case hearing does not exist under other laws.

(g) Subchapters D - G of this chapter do not apply to:

(1) applications for sludge registrations and notifications under Chapter 312 of this title (relating to Sludge Use, Disposal and Transportation);

(2) applications for authorization under Chapter 321 of this title (relating to Control of Certain Activities by Rule) except for applications for individual permits under Subchapter B of that chapter;

(3) applications for registrations under Chapter 330 of this title (relating to Municipal Solid Waste);

(4) applications for registrations and notifications under Chapter 332 of this title (relating to Composting);

(5) applications under Texas Water Code, Chapter 13 and Texas Water Code, §§11.036, 11.041, or 12.013. The executive director shall review hearing requests concerning applications filed under these provisions, determine the sufficiency of hearing requests under standards specified by law, and may refer the application to the chief clerk for hearing processing. The maximum expected duration of a hearing on an application referred to the State Office of Administrative Hearings under this provision shall be no longer than one year from the first day of the preliminary hearing, unless otherwise directed by the commission. The issues to be considered in a State Office of Administrative Hearings hearing on an application subject to this provision are all those issues that are material and relevant under the law;

(6) applications under Chapter 122 of this title (relating to Federal Operating Permits);

(7) applications for initial issuance of voluntary emissions reduction permits under Texas Health and Safety Code, §382.0519.

(8) applications for initial issuance of permits for electric generating facility permits under Texas Utilities Code, §39.264;

(9) air quality standard permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(10) applications for multiple plant permits under Texas Health and Safety Code, §382.05194;

(11) applications for pre-injection unit registrations under §331.17 of this title (relating to Pre-injection Units Registration); and

(12) applications where the opportunity for a contested case hearing does not exist under other laws.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405410
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: September 16, 2004
Proposal publication date: April 9, 2004
For further information, please call: (512) 239-6087

♦ ♦ ♦

## SUBCHAPTER F. REQUESTS FOR RECONSIDERATION OR CONTESTED CASE HEARING

**30 TAC §55.201**

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.021, which provides that permits for disposal of brine produced by desalination operations are not subject to the hearing requirements of TWC, §27.018 and Texas Government Code, Chapter 2001. The pre-injection unit registration amendment is also adopted under Texas Health and Safety Code, §361.017 and §361.024, which provide the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act; and under Texas Health and Safety Code, §401.051, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Radiation Control Act.

*§55.201. Requests for Reconsideration or Contested Case Hearing.*

(a) A request for reconsideration or contested case hearing must be filed no later than 30 days after the chief clerk mails (or otherwise transmits) the executive director's decision and response to comments and provides instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing.

(b) The following may request a contested case hearing under this chapter:

(1) the commission;

(2) the executive director;

(3) the applicant; and

(4) affected persons, when authorized by law.

(c) A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided by subsection (a) of this section, and may not be based on an issue that was raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment.

(d) A hearing request must substantially comply with the following:

(1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;

(2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;

(3) request a contested case hearing;

(4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis

of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and

(5) provide any other information specified in the public notice of application.

(e) Any person may file a request for reconsideration of the executive director's decision. The request must be in writing and be filed by United States mail, facsimile, or hand delivery with the chief clerk within the time provided by subsection (a) of this section. The request should also contain the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. The request for reconsideration must expressly state that the person is requesting reconsideration of the executive director's decision, and give reasons why the decision should be reconsidered.

(f) Documents that are filed with the chief clerk before the public comment deadline that comment on an application but do not request reconsideration or a contested case hearing shall be treated as public comment.

(g) Procedures for late filed public comments, requests for reconsideration, or contested case hearing are as follows.

(1) A request for reconsideration or contested case hearing, or public comment shall be processed under §55.209 of this title (relating to Processing Requests for Reconsideration and Contested Case Hearing) or under §55.156 of this title (relating to Public Comment Processing), respectively, if it is filed by the deadline. The chief clerk shall accept a request for reconsideration or contested case hearing, or public comment that is filed after the deadline but the chief clerk shall not process it. The chief clerk shall place the late documents in the application file.

(2) The commission may extend the time allowed to file a request for reconsideration, or a request for a contested case hearing.

(h) Any person, except the applicant, the executive director, and the public interest counsel, who was provided notice as required under Chapter 39 of this title (relating to Public Notice) but who failed to file timely public comment, failed to file a timely hearing request, failed to participate in the public meeting held under §55.154 of this title (relating to Public Meetings), and failed to participate in the contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings) may file a motion for rehearing under §50.119 of this title (relating to Notice of Commission Action, Motion for Rehearing), or §80.272 of this title (relating to Motion for Rehearing) or may file a motion to overturn the executive director's decision under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) only to the extent of the changes from the draft permit to the final permit decision.

(i) Applications for which there is no right to a contested case hearing include:

(1) a minor amendment or minor modification of a permit under Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(2) a Class 1 or Class 2 modification of a permit under Chapter 305, Subchapter D of this title;

(3) any air permit application for the following:

(A) initial issuance of a voluntary emission reduction permit or an electric generating facility permit;

(B) permits issued under Chapter 122 of this title (relating to Federal Operating Permits); or

(C) amendment, modification, or renewal of an air application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. The commission may hold a contested case hearing if the application involves a facility for which the applicant's compliance history contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations;

(4) hazardous waste permit renewals under §305.65(a)(8) of this title (relating to Renewal);

(5) an application, under Texas Water Code, Chapter 26, to renew or amend a permit if:

(A) the applicant is not applying to:

*(i)* increase significantly the quantity of waste authorized to be discharged; or

*(ii)* change materially the pattern or place of discharge;

(B) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;

(C) any required opportunity for public meeting has been given;

(D) consultation and response to all timely received and significant public comment has been given; and

(E) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit;

(6) an application for a Class I injection well permit used only for the disposal of desalination brine under Texas Water Code, §27.021, concerning Permit for Disposal of Brine From Desalination Operations in Class I Wells;

(7) an application for a pre-injection unit registration under §331.17 of this title (relating to Pre- injection Units Registration); and

(8) other types of applications where a contested case hearing request has been filed, but no opportunity for hearing is provided by law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405411
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: September 16, 2004
Proposal publication date: April 9, 2004
For further information, please call: (512) 239-6087

♦ ♦ ♦

## CHAPTER 305. CONSOLIDATED PERMITS

## SUBCHAPTER D. AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS

### 30 TAC §305.72

The Texas Commission on Environmental Quality (commission) adopts the amendment to §305.72. Section 305.72 is adopted *without change* to the proposed text as published in the April 9, 2004 issue of the *Texas Register* (29 TexReg 3586), and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

This rulemaking amends §305.72 in order to implement House Bill (HB) 2567, 78th Legislature, 2003, and its amendments to Texas Water Code (TWC), §27.021. The intent of HB 2567 was to exempt permits for Class I injection wells that dispose of brine produced by a desalination operation from the hearing required by TWC, §27.018 under the provisions of Texas Government Code, Chapter 2001. HB 2567 does not exempt Class I injection well permits for the disposal of any other waste streams from these hearing requirements. The purpose of this amendment is to provide that when a Class I injection well permit for the disposal of desalination brine is issued without a hearing under HB 2567, and then the permit holder seeks to dispose of other types of wastes in the well, the permit amendment process will provide the opportunity for a hearing as required by TWC, §27.018 under the provisions of Texas Government Code, Chapter 2001.

The amendment specifies that a permit for a Class I injection well used only for the disposal of desalination brine may not be administratively modified, under §305.72(b)(4), in order to change the waste streams injected into the Class I injection well to a waste stream other than desalination brine. The effect of this amendment is that a permit change of this kind requires a major amendment under §305.62(c)(1)(A), which provides an opportunity for a contested case hearing. This amendment ensures that the hearing requirements of TWC, §27.018 for general purpose Class I injection well permits are retained for the disposal of wastes other than desalination brine after a permit is issued under the provisions of HB 2567.

Amendments to 30 TAC Chapters 50, 55, and 331 are also adopted in this issue of the *Texas Register* to implement HB 2567.

SECTION DISCUSSION

This rulemaking amends §305.72(b)(4) to specify that the kind of permit modification allowed by this paragraph shall not include modifying a Class I injection well permit used only for the disposal of desalination brine to a general purpose Class I injection well permit. This amendment effectively precludes a permit holder for this type of Class I injection well (used only for the disposal of desalination brine) from adding waste streams other than desalination brine without providing the opportunity for a contested case hearing.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225. The commission determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rulemaking does not meet the definition of a "major environmental rule" because the specific intent of the rule is to preserve the hearing requirements of TWC, §27.018. The rule substantially advances this purpose by providing that §305.72 may not be used to add a waste stream, other than desalination brine, to the permit for a Class I injection well that was issued without a contested case hearing. The rulemaking does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs because it maintains current requirements of state law and thus does not change the status quo. The rulemaking is not anticipated to adversely affect in a material way the environment or the public health and safety of the state or a sector of the state because the provision maintains existing requirements of state law.

In addition, the rulemaking does not exceed the four applicability requirements of Texas Government Code, §2001.0225(a), because the rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or seek to adopt a rule solely under the general powers of the agency.

The rulemaking does not exceed a standard set by federal law because there are no corresponding federal standards requiring a contested case hearing for a permit for a Class I injection well. Furthermore, the rulemaking does not exceed an express requirement of state law because the hearing requirement is mandated by state law. In addition, the rulemaking does not exceed the requirements of the delegation agreement concerning injection wells because the delegation agreement does not require contested case hearings for Class I injection well permits to dispose of brine produced by desalination operations. Finally, this rulemaking is not adopted solely under the general powers of the agency but is adopted under the specific provisions of TWC, §27.019 and §27.021.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the amendment and performed an assessment of whether the amendment constitutes a taking under Texas Government Code, §2007.043.

The specific purpose of the amendment is to preserve the contested case hearing requirement of TWC, §27.018. TWC, §27.021 provides that an application for a Class I injection well for the disposal of brine produced by a desalination operation is not subject to the hearing requirements of TWC, §27.018 and Texas Government Code, Chapter 2001. Section 305.72 provides a procedure for permit modification at the request of the permittee without the opportunity for a contested case hearing. One of the permit modifications under this section is a change of waste stream. The rulemaking provides that this provision may not be used to add a waste stream, other than desalination brine, to the permit of a Class I injection well when that permit was obtained without the opportunity for a contested case hearing.

The amendment substantially advances the previously stated purpose by providing that §305.72 may not be used to add a waste stream other than desalination brine to the permit of a

Class I injection well issued without the opportunity for a contested case hearing.

The adopted amendment does not impose any burden on private real property and does not result in any benefit to society from the use of private real property because the amendment does not directly apply to the ownership or use of a particular parcel of private real property.

Promulgation and enforcement of the amendment will not be a statutory or a constitutional taking of private real property because the amendment does not apply to the ownership or use of a particular parcel of private real property. The amendment does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond any reduction in value that would otherwise exist in the absence of the amendment.

The commission has no reasonable alternative actions that could accomplish the specified purpose of preserving the contested case hearing requirement of TWC, §27.018. The amendment ensures that the contested case hearing requirements for general purpose Class I injection well permits will be retained after a permit is issued under the provisions of HB 2567.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rulemaking is identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the amendment is consistent with CMP goals and policies because the rulemaking is an administrative stipulation that specifies that §305.72(b)(4) shall not be used to change a permit from a Class I injection well permit used only for the disposal of desalination brine to a general purpose Class I injection well permit. This amendment will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendment will not violate (exceed) any standards identified in the applicable CMP goals and policies.

PUBLIC COMMENT

The comment period ended May 10, 2004. Two written comments were received: one from the United States Environmental Protection Agency (EPA), Region 6, and another from the commission's Office of Public Interest Counsel (OPIC). EPA suggested changes to the rulemaking but did not indicate support of or opposition to the rule. OPIC indicated support of the rule.

RESPONSE TO COMMENTS

The comments are not directly relevant to the amendments in Chapter 305. All comments are responded to in the preambles for the amendments to Chapters 50, 55, and 331. These preambles are also published in this issue of the *Texas Register*.

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.021, which provides that permits for disposal of brine produced by desalination operations are not subject to the hearing requirements of §27.018 and Texas Government Code, Chapter 2001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405412
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: September 16, 2004
Proposal publication date: April 9, 2004
For further information, please call: (512) 239-6087

♦ ♦ ♦

## CHAPTER 331. UNDERGROUND INJECTION CONTROL

## SUBCHAPTER A. GENERAL PROVISIONS

### 30 TAC §331.2

The Texas Commission on Environmental Quality (commission) adopts the amendment to §331.2. Section 331.2 is adopted *with change* to the proposed text as published in the April 9, 2004 issue of the *Texas Register* (29 TexReg 3586), and will be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The amendment implements House Bill (HB) 2567, 78th Legislature, 2003, and its amendment to Texas Water Code (TWC), §27.021.

HB 2567 allows the commission to issue a permit to dispose of brine produced by a desalination operation in a Class I injection well without providing for a contested case hearing, as long as all requirements for a Class I injection well permit are met. This rulemaking does not affect public notice of a permit application, opportunity to comment on a permit application, or the opportunity for a public meeting on a permit application under 30 TAC §55.154. The public meeting provisions of §55.154 satisfy the public hearing provisions of 40 Code of Federal Regulations (CFR) §124.12.

HB 2567 may expedite the approval of Class I injection well permits for the disposal of desalination brine by removing the potential for a contested case hearing under the provisions of TWC, §27.018. TWC, §27.021(b) establishes a notice and comment process for applications for the disposal of brine in Class I injection wells. It further sets forth that notwithstanding TWC, §27.018, this type of application is not subject to the hearing requirements of Texas Government Code, Chapter 2001. However, HB 2567 did not address the commission's discretionary authority to hold a hearing under its general powers.

If desalination brine is hazardous, and the applicant wishes to dispose of the hazardous waste in a Class I well, then the well (and in most cases the surface facility) must be permitted by the commission. In addition, the applicant is subject to United States Environmental Protection Agency's (EPA's) regulations regarding a no-migration demonstration.

This rulemaking does not affect hearings on applicants who seek authorization to dispose of desalination brine through methods other than Class I injection wells. Other options for disposal of nonhazardous desalination brine include Class V injection wells, evaporation ponds, and surface discharge under a Texas Pollutant Discharge Elimination System permit. 30 TAC §331.11(a) limits Class V wells to disposal of nonhazardous wastes. Disposal of nonhazardous waste through the use of a Class V injection well can be authorized by rule or by a site-specific permit, subject to certain water quality limitations. Authorizations by rule are not subject to hearings, while site-specific permits for Class V wells are subject to the hearing request process provided under Chapter 55.

HB 2567 does not define the terms "brine" or "desalination operation." The adopted amendment defines "Desalination brine" and "Desalination operation" to assist the regulated community and the public in understanding the terms when they are used to implement HB 2567 in Chapters 50, 55, and 305. Desalination operations produce useable water and a waste stream. The waste stream, referred to as "brine produced by a desalination operation" in HB 2567, is defined as "Desalination brine" in this rulemaking. "Desalination brine" is often referred to as "reject water" by the desalination industry. The composition of desalination brine will vary, depending on the source water and the desalination process used. All Class I injection well permit applications require that applicants submit a waste analysis plan that provides a description and analysis of the chemical and physical characteristics of the waste streams proposed to be injected. Desalination brine may be nonhazardous or hazardous waste depending on the results of the waste analysis. The statutory and regulatory requirements for disposal of hazardous brine are more stringent than the requirements for disposal of nonhazardous brine. The application would be subject to EPA's regulations regarding no-migration demonstration.

Changes to 30 TAC Chapters 50, 55, and 305 are also adopted in this issue of the *Texas Register* to implement HB 2567.

SECTION DISCUSSION

Section 331.2, Definitions, adds "Desalination brine" and "Desalination operation" as new paragraphs (29) and (30) and renumbers subsequent definitions. The commission has chosen the term "desalination brine" to describe "the waste stream produced by a desalination operation" to distinguish this type of brine from other regulated and commercial brines. The commission is defining the term "Desalination operation" as "a process which produces water of useable quality by desalination" to provide guidance regarding the scope of the term "operation" and to indicate that desalination brine is the waste stream produced by the process of desalination.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225. The commission determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rulemaking does not meet the definition of a "major environmental rule" because the specific intent of the rule is to define the terms "Desalination brine" and "Desalination operation." These terms are used in other chapters of the commission's rules to provide that an application for a Class I injection well for the disposal of brine from a desalination operation is not subject to the hearing requirements of TWC, §27.018 and Texas Government Code, Chapter 2001 (contested case hearing). The rule substantially advances this purpose by defining the terms "Desalination brine" and "Desalination operation." The rulemaking does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs because it merely defines terms used in other rules. The rulemaking is not anticipated to adversely affect in a material way the environment or the public health and safety of the state or a sector of the state because the applicant for the permit must meet all the statutory and regulatory requirements for issuance of a permit for a Class I injection well.

In addition, the rulemaking does not exceed the four applicability requirements of Texas Government Code, §2001.0225, because the rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or seek to adopt a rule solely under the general powers of the agency.

The rulemaking does not exceed a standard set by federal law because there are no such corresponding federal standards requiring specific definitions of these terms. Furthermore, the rulemaking does not exceed an express requirement of state law because the rulemaking is mandated by state law. In addition, the rulemaking does not exceed the requirements of the delegation agreement concerning injection wells because the delegation agreement does not require specific definitions of these terms. Finally, this rulemaking is not adopted solely under the general powers of the agency but is adopted under the specific provisions of TWC, §27.019 and §27.021.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the amendment and performed an assessment of whether the amendment constitutes a taking under Texas Government Code, §2007.043.

The specific purpose of the amendment is to define the terms "Desalination brine" and "Desalination operation." These terms are used in other chapters of the commission's rules to provide that an application for a Class I injection well for the disposal of brine from a desalination operation is not subject to the hearing requirements of TWC, §27.018 and Texas Government Code, Chapter 2001 (contested case hearing).

The amendment substantially advances the previously stated purpose by defining the terms "Desalination brine" and "Desalination operation."

The amendment does not impose any burden on private real property and does not result in any benefit to society from the use of private real property because the amendment does not directly apply to the ownership or use of private real property.

Promulgation and enforcement of the amendment will not be a statutory or a constitutional taking of private real property because the amendment does not apply to the ownership or use of private real property. The amendment does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond any reduction in value that would otherwise exist in the absence of the amendment.

The commission has no reasonable alternative actions that could accomplish the specified purpose of defining the terms "desalination brine" and "desalination operation." Without the adopted amendment, the definitions related to HB 2567 would remain outdated.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor does it affect any action/authorization identified in §505.11. Therefore, the adopted rule is not subject to the Coastal Management Program.

PUBLIC COMMENT

The comment period ended May 10, 2004. Two written comments were received: one from the EPA, Region 6, and another from the commission's Office of Public Interest Counsel (OPIC). EPA suggested changes to the rulemaking but did not indicate support of or opposition to the rule. OPIC indicated support of the rule.

RESPONSE TO COMMENTS

EPA recommends modifying the preamble to include language that clarifies that the opportunity to comment and request a public meeting, as described in §55.154 and 40 CFR §124.12, is not affected by the rulemaking.

The preamble has been modified to address this concern by stating that this rulemaking does not affect the opportunity to comment on a permit application or the opportunity to request a public meeting under §55.154. The preamble also states that the public meeting provisions of §55.154 satisfy the public hearing provisions of 40 CFR §124.12.

EPA recommends that the rulemaking explicitly state that permit applications for Class V wells for the disposal of waste from desalination operations are still subject to the opportunity for a contested case hearing. EPA also recommends identifying the state rules that prohibit the use of Class V wells for the injection of hazardous waste.

The preamble has been modified to clarify that disposal of nonhazardous waste through the use of a Class V injection well can be authorized by rule or by a site-specific permit. The preamble also adds that this rulemaking does not affect hearings for a site-specific permit application that seeks authorization to dispose of desalination brine in a Class V injection well. This rulemaking does not impact authorizations by rule for Class V injection wells for disposal of desalination brine because authorizations by rule are not subject to the public hearing request process. The preamble also states that §331.11(a) limits Class V wells to disposal of nonhazardous wastes.

EPA recommends that the rulemaking clarify that applicants applying for a permit to dispose of hazardous waste from desalination operations in a Class I well must file a Land Ban no-migration petition with EPA.

The preamble has been modified to address this concern by stating that if desalination brine is hazardous, and the applicant wishes to dispose of it in a Class I well, then the well (and in most cases the surface facility) must be permitted by the commission, and the applicant is also subject to EPA's regulations regarding a no-migration demonstration.

EPA also recommends that the rulemaking clarify that, in cases involving hazardous waste from desalination operations, no exception to the opportunity for contested case hearings will be granted.

The legislature did not differentiate between hazardous and nonhazardous waste when it enacted TWC, §27.021. Under TWC, §27.021, all Class I underground injection control permit applications for the disposal of desalination brine, whether hazardous or nonhazardous, are subject to public notice and comment procedures but are not subject to a contested case hearing under TWC, §27.018.

The EPA is recommending that the commission continue to make some permits issued under TWC, §27.021 subject to a contested case hearing. This recommendation exceeds the requirements of the EPA's federal rules for underground injection control. The federal rules require a public hearing under 40 CFR §124.12 but do not require a contested case hearing.

The commission's public meeting requirements in §55.154 satisfy the federal public hearing requirements (40 CFR §124.12). Public meetings provide an opportunity for public input and anyone can participate in a public meeting, but only affected parties may participate in a contested case hearing.

No change has been made in response to this comment.

OPIC supports adoption of the rule and supports the recognition in the preamble that the rule changes do not affect the commission's discretionary authority to hold a hearing if the commission determines that a hearing is in the public interest. OPIC also agrees that the language added by HB 2567 does not remove the power of the commission to hold a hearing under TWC, §5.102(b). OPIC stated that the language added by HB 2567 does not remove the power of the commission to hold a hearing under TWC, §27.018. Moreover, OPIC stated that TWC, §27.021 does not exempt desalination injection well permit applications from the power of the commission to grant a hearing in the public interest under TWC, §27.018(a).

The commission appreciates the support for this rulemaking.

Under TWC, §27.021(b), permit applications authorized by TWC, §27.021 are not subject to the hearing provisions in TWC, §27.018. The first sentence of TWC, §27.021(b) provides for public notice and comment. The second sentence of TWC, §27.021(b) states that an application authorized by §27.021 is not subject to the hearing requirements of Texas Government Code, Chapter 2001, notwithstanding §27.018. The language contained in TWC, §27.021(b) means that permits issued under §27.021 are subject to public notice and comment procedures and are not subject to the hearing provisions under §27.018.

HB 2567 did not address the commission's discretionary authority to hold a hearing under its general powers. No change has been made in response to this comment.

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other

laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.021, which provides that permits for disposal of brine produced by desalination operations are not subject to the hearing requirements of §27.018 and Texas Government Code, Chapter 2001.

*§331.2. Definitions.*

General definitions can be found in Chapter 3 of this title (relating to Definitions). The following words and terms, when used in this chapter, have the following meanings.

(1) Abandoned well--A well which has been permanently discontinued from use or a well for which, after appropriate review and evaluation by the commission, there is no reasonable expectation of a return to service.

(2) Activity--The construction or operation of an injection well for disposal of waste, or of pre-injection units for processing or storage of waste.

(3) Affected person--Any person whose legal rights, duties, or privileges may be adversely affected by the proposed injection operation for which a permit is sought.

(4) Annulus--The space in the wellbore between the injection tubing and the long string casing and/or liner.

(5) Annulus pressure differential--The difference between the annulus pressure and the injection pressure in an injection well.

(6) Aquifer--A geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

(7) Aquifer restoration--The process used to achieve or exceed water quality levels established by the commission for a permit/production area.

(8) Aquifer storage well--A Class V injection well used for the injection of water into a geologic formation, group of formations, or part of a formation that is capable of underground storage of water for later retrieval and beneficial use.

(9) Area of review--The area surrounding an injection well described according to the criteria set forth in §331.42 of this title (relating to Area of Review) or in the case of an area permit, the project area plus a circumscribing area the width of which is either 1/4 mile or a number calculated according to the criteria set forth in §331.42 of this title.

(10) Area permit--An injection well permit which authorizes the construction and operation of two or more similar injection wells within a specified area.

(11) Artificial liner--The impermeable lining of a pit, lagoon, pond, reservoir, or other impoundment, that is made of a synthetic material such as butyl rubber, chlorosulfonated polyethylene, elasticized polyolefin, polyvinyl chloride (PVC), other manmade materials, or similar materials.

(12) Baseline quality--The parameters and their concentrations that describe the local groundwater quality of an aquifer prior to the beginning of injection activities.

(13) Baseline well--A well from which groundwater is analyzed to define baseline quality in the permit area (regional baseline well) or in the production area (production area baseline well).

(14) Buffer area--The area between any mine area boundary and the permit area boundary.

(15) Caprock--A geologic formation typically overlying the crest and sides of a salt stock. The caprock consists of a complex assemblage of minerals including calcite ($CaCO_3$), anhydrite ($CaSO_4$), and accessory minerals. Caprocks often contain lost circulation zones characterized by rock layers of high porosity and permeability.

(16) Captured facility--A manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(17) Casing--Material lining used to seal off strata at and below the earth's surface.

(18) Cement--A substance generally introduced as a slurry into a wellbore which sets up and hardens between the casing and borehole and/or between casing strings to prevent movement of fluids within or adjacent to a borehole, or a similar substance used in plugging a well.

(19) Cementing--The operation whereby cement is introduced into a wellbore and/or forced behind the casing.

(20) Cesspool--A drywell that receives untreated sanitary waste containing human excreta, and which sometimes has an open bottom and/or perforated sides.

(21) Commercial facility--A Class I permitted facility, where one or more commercial wells are operated.

(22) Commercial underground injection control (UIC) Class I well facility--Any waste management facility that accepts, for a charge, hazardous or nonhazardous industrial solid waste for disposal in a UIC Class I injection well, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(23) Commercial well--An underground injection control Class I injection well which disposes of hazardous or nonhazardous industrial solid wastes, for a charge, except for a captured facility or a facility that accepts waste only from facilities owned or effectively controlled by the same person.

(24) Conductor casing or conductor pipe--A short string of large-diameter casing used to keep the top of the wellbore open during drilling operations.

(25) Cone of influence--The potentiometric surface area around the injection well within which increased injection zone pressures caused by injection of wastes would be sufficient to drive fluids into an underground source of drinking water or freshwater aquifer.

(26) Confining zone--A part of a formation, a formation, or group of formations between the injection zone and the lowermost underground source of drinking water or freshwater aquifer that acts as a barrier to the movement of fluids out of the injection zone.

(27) Contaminant--Any physical, biological, chemical, or radiological substance or matter in water.

(28) Control parameter--Any chemical constituent of groundwater monitored on a routine basis used to detect or confirm the presence of mining solutions in a designated monitor well.

(29) Desalination brine--The waste stream produced by a desalination operation containing concentrated salt water, other naturally occurring impurities, and additives used in the operation and maintenance of a desalination operation.

(30) Desalination operation--A process which produces water of usable quality by desalination.

(31) Disposal well--A well that is used for the disposal of waste into a subsurface stratum.

(32) Disturbed salt zone--Zone of salt enveloping a salt cavern, typified by increased values of permeability or other induced anomalous conditions relative to undisturbed salt which lies more distant from the salt cavern, and is the result of mining activities during salt cavern development and which may vary in extent through all phases of a cavern including the post-closure phase.

(33) Drilling mud--A heavy suspension used in drilling an injection well, introduced down the drill pipe and through the drill bit.

(34) Drywell--A well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids.

(35) Excursion--The movement of mining solutions into a designated monitor well.

(36) Existing injection well--A Class I well which was authorized by an approved state or EPA-administered program before August 25, 1988 or a well which has become a Class I well as a result of a change in the definition of the injected waste which would render the waste hazardous under §335.1 of this title (relating to Definitions).

(37) Fluid--Material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

(38) Formation--A body of rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

(39) Formation fluid--Fluid present in a formation under natural conditions.

(40) Fresh water--Water having bacteriological, physical, and chemical properties which make it suitable and feasible for beneficial use for any lawful purpose.

(A) For the purposes of this subchapter, it will be presumed that water is suitable and feasible for beneficial use for any lawful purpose only if:

*(i)* it is used as drinking water for human consumption; or

*(ii)* the groundwater contains fewer than 10,000 milligrams per liter (mg/L) total dissolved solids; and

*(iii)* it is not an exempted aquifer.

(B) This presumption may be rebutted upon a showing by the executive director or an affected person that water containing greater than or equal to 10,000 mg/L total dissolved solids can be put to a beneficial use.

(41) Groundwater--Water below the land surface in a zone of saturation.

(42) Groundwater protection area--A geographic area (delineated by the state under the Safe Drinking Water Act, 42 United States Code, §300j-13) near and/or surrounding community and non-transient, non-community water systems that use groundwater as a source of drinking water.

(43) Hazardous waste--Hazardous waste as defined in §335.1 of this title (relating to Definitions).

(44) Improved sinkhole--A naturally occurring karst depression or other natural crevice found in carbonate rocks, volcanic terrain, and other geologic settings which has been modified by man for the purpose of directing and emplacing fluids into the subsurface.

(45) Injection interval--That part of the injection zone in which the well is authorized to be screened, perforated, or in which the waste is otherwise authorized to be directly emplaced.

(46) Injection operations--The subsurface emplacement of fluids occurring in connection with an injection well or wells, other than that occurring solely for construction or initial testing.

(47) Injection well--A well into which fluids are being injected. Components of an injection well annulus monitoring system are considered to be a part of the injection well.

(48) Injection zone--A formation, a group of formations, or part of a formation that receives fluid through a well.

(49) In service--The operational status when an authorized injection well is capable of injecting fluids, including times when the well is shut-in and on standby status.

(50) Intermediate casing--A string of casing with diameter intermediate between that of the surface casing and that of the smaller long-string or production casing, and which is set and cemented in a well after installation of the surface casing and prior to installation of the long-string or production casing.

(51) Large capacity cesspool--A cesspool that is designed for a flow of greater than 5,000 gallons per day.

(52) Large capacity septic system--A septic system that is designed for a flow of greater than 5,000 gallons per day.

(53) Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(54) Liner--An additional casing string typically set and cemented inside the long string casing and occasionally used to extend from base of the long string casing to or through the injection zone.

(55) Long string casing or production casing--A string of casing that is set inside the surface casing and that usually extends to or through the injection zone.

(56) Lost circulation zone--A term applicable to rotary drilling of wells to indicate a subsurface zone which is penetrated by a wellbore, and which is characterized by rock of high porosity and permeability, into which drilling fluids flow from the wellbore to the degree that the circulation of drilling fluids from the bit back to ground surface is disrupted or "lost."

(57) Mine area--The area defined by a line through the ring of designated monitor wells installed to monitor the production zone.

(58) Mine plan--A map of adopted mine areas and an estimated schedule indicating the sequence and timetable for mining and any required aquifer restoration.

(59) Monitor well--Any well used for the sampling or measurement of any chemical or physical property of subsurface strata or their contained fluids.

(A) Designated monitor wells are those listed in the production area authorization for which routine water quality sampling is required.

(B) Secondary monitor wells are those wells in addition to designated monitor wells, used to delineate the horizontal and vertical extent of mining solutions.

(C) Pond monitor wells are wells used in the subsurface surveillance system near ponds or other pre-injection units.

(60) Motor vehicle waste disposal well--A well used for the disposal of fluids from vehicular repair or maintenance activities, including, but not limited to, repair and maintenance facilities for cars, trucks, motorcycles, boats, railroad locomotives, and airplanes.

(61) New injection well--Any well, or group of wells, not an existing injection well.

(62) New waste stream--A waste stream not permitted.

(63) Non-commercial facility--A Class I permitted facility which operates only non-commercial wells.

(64) Non-commercial underground injection control (UIC) Class I well facility--A UIC Class I permitted facility where only non-commercial wells are operated.

(65) Non-commercial well--An underground injection control Class I injection well which disposes of wastes that are generated on-site, at a captured facility or from other facilities owned or effectively controlled by the same person.

(66) Off-site--Property which cannot be characterized as on-site.

(67) On-site--The same or geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which the owner controls and to which the public does not have access, is also considered on-site property.

(68) Out of service--The operational status when a well is not authorized to inject fluids, or the well itself is incapable of injecting fluids for mechanical reasons, maintenance operations, or well workovers or when injection is prohibited due to the well's inability to comply with the in-service operating standards of this chapter.

(69) Permit area--The area owned or under lease by the permittee which may include buffer areas, mine areas, and production areas.

(70) Plugging--The act or process of stopping the flow of water, oil, or gas into or out of a formation through a borehole or well penetrating that formation.

(71) Point of injection--For a Class V well, the last accessible sampling point prior to fluids being released into the subsurface environment.

(72) Pollution--The contamination of water or the alteration of the physical, chemical, or biological quality of water:

(A) that makes it harmful, detrimental, or injurious:

*(i)* to humans, animal life, vegetation, or property; or

*(ii)* to public health, safety, or welfare; or

(B) that impairs the usefulness or the public enjoyment of the water for any lawful and reasonable purpose.

(73) Pre-injection units--The on-site above-ground appurtenances, structures, equipment, and other fixtures including the injection pumps, filters, tanks, surface impoundments, and piping for wastewater transmission between any such facilities and the well that are or will be used for storage or processing of waste to be injected, or in conjunction with an injection operation.

(74) Production area--The area defined by a line generally through the outer perimeter of injection and recovery wells used for mining.

(75) Production area authorization--A document, issued under the terms of an injection well permit, approving the initiation of mining activities in a specified production area within a permit area.

(76) Production zone--The stratigraphic interval extending vertically from the shallowest to the deepest stratum into which mining solutions are authorized to be introduced.

(77) Radioactive waste--Any waste which contains radioactive material in concentrations which exceed those listed in 10 Code of Federal Regulations Part 20, Appendix B, Table II, Column 2 and as amended.

(78) Restoration demonstration--A test or tests conducted by a permittee to simulate production and restoration conditions and verify or modify the fluid handling values submitted in the permit application.

(79) Restored aquifer--An aquifer whose local groundwater quality has, by natural or artificial processes, returned to levels consistent with restoration table values or better as verified by an approved sampling program.

(80) Salt cavern--A hollowed-out void space that has been purposefully constructed within a salt stock, typically by means of solution mining by circulation of water from a well or wells connected to the surface.

(81) Salt cavern confining zone--A zone between the salt cavern injection zone and all underground sources of drinking water and freshwater aquifers, that acts as a barrier to movement of waste out of a salt cavern injection zone, and consists of the entirety of the salt stock excluding any portion of the salt stock designated as an underground injection control (UIC) Class I salt cavern injection zone or any portion of the salt stock occupied by a UIC Class II or Class III salt cavern or its disturbed salt zone.

(82) Salt cavern injection interval--That part of a salt cavern injection zone consisting of the void space of the salt cavern into which waste is stored or disposed of, or which is capable of receiving waste for storage or disposal.

(83) Salt cavern injection zone--The void space of a salt cavern that receives waste through a well, plus that portion of the salt stock enveloping the salt cavern, and extending from the boundaries of the cavern void outward a sufficient thickness to contain the disturbed salt zone, and an additional thickness of undisturbed salt sufficient to ensure that adequate separation exists between the outer limits of the injection zone and any other activities in the domal area.

(84) Salt cavern solid waste disposal well or salt cavern disposal well--For the purposes of this chapter, regulations of the commission, and not to underground injection control (UIC) Class II or UIC Class III wells in salt caverns regulated by the Texas Railroad Commission, a salt cavern disposal well is a type of UIC Class I injection well used:

(A) to solution mine a waste storage or disposal cavern in naturally occurring salt; and/or

(B) to inject hazardous, industrial, or municipal waste into a salt cavern for the purpose of storage or disposal of the waste.

(85) Salt dome--A geologic structure that includes the caprock, salt stock, and deformed strata surrounding the salt stock.

(86) Salt stock--A geologic formation consisting of a relatively homogeneous mixture of evaporite minerals dominated by halite (NaCl) that has migrated from originally tabular beds into a vertical orientation.

(87) Sanitary waste--Liquid or solid waste originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned.

(88) Septic system--A well that is used to emplace sanitary waste below the surface, and is typically composed of a septic tank and subsurface fluid distribution system or disposal system.

(89) Stratum--A sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock or material.

(90) Subsurface fluid distribution system--An assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground.

(91) Surface casing--The first string of casing (after the conductor casing, if any) that is set in a well.

(92) Temporary injection point--A method of Class V injection that uses push point technology (injection probes pushed into the ground) for the one-time injection of fluids into or above an underground source of drinking water.

(93) Total dissolved solids (TDS)--The total dissolved (filterable) solids as determined by use of the method specified in 40 Code of Federal Regulations Part 136, as amended.

(94) Transmissive fault or fracture--A fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

(95) Underground injection--The subsurface emplacement of fluids through a well.

(96) Underground injection control (UIC)--The program under the federal Safe Drinking Water Act, Part C, including the approved Texas state program.

(97) Underground source of drinking water (USDW)--An "aquifer" or its portions:

(A) which supplies drinking water for human consumption; or

(B) in which the groundwater contains fewer than l0,000 milligrams per liter total dissolved solids; and

(C) which is not an exempted aquifer.

(98) Upper limit--A parameter value established by the commission in a permit/production area authorization which when exceeded indicates mining solutions may be present in designated monitor wells.

(99) Verifying analysis--A second sampling and analysis of control parameters for the purpose of confirming a routine sample analysis which indicated an increase in any control parameter to a level exceeding the upper limit. Mining solutions are assumed to be present in a designated monitor well if a verifying analysis confirms that any control parameter in a designated monitor well is present in concentration equal to or greater than the upper limit value.

(100) Well--A bored, drilled, or driven shaft whose depth is greater than the largest surface dimension, a dug hole whose depth is greater than the largest surface dimension, an improved sinkhole, or a subsurface fluid distribution system but does not include any surface pit, surface excavation, or natural depression.

(101) Well injection--The subsurface emplacement of fluids through a well.

(102) Well monitoring--The measurement by on-site instruments or laboratory methods of any chemical, physical, radiological, or biological property of the subsurface strata or their contained fluids penetrated by the wellbore.

(103) Well stimulation--Several processes used to clean the well bore, enlarge channels, and increase pore space in the interval to be injected thus making it possible for wastewater to move more readily into the formation, including, but not limited to, surging, jetting, blasting, acidizing, and hydraulic fracturing.

(104) Workover--An operation in which a down-hole component of a well is repaired, the engineering design of the well is changed, or the mechanical integrity of the well is compromised. Workovers include operations such as sidetracking, the addition of perforations within the permitted injection interval, and the addition of liners or patches. For the purposes of this chapter, workovers do not include well stimulation operations.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405413
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: September 16, 2004
Proposal publication date: April 9, 2004
For further information, please call: (512) 239-6087

♦ ♦ ♦

# TITLE 31. NATURAL RESOURCES AND CONSERVATION

## PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

### CHAPTER 65. WILDLIFE

### SUBCHAPTER Q. STATEWIDE FUR-BEARING ANIMAL PROCLAMATION

**31 TAC §§65.372, 65.375, 65.377, 65.379**

The Texas Parks and Wildlife Commission adopts amendments to §§65.372, 65.375, 65.377, and 65.379, concerning the Statewide Fur-Bearing Animal Proclamation. Section 65.375, concerning Open Seasons; Means and Methods, is adopted with changes to the proposed text as published in the April 23, 2004, issue of the *Texas Register* (29 TexReg 3943). Sections 65.372, 65.377, and 65.379 are adopted without change and will not be republished. The change to §65.375 restores the

contents of current subsection (c)(1), which were proposed for removal. The change is necessary because the department determined that the subsection as proposed might be problematic. The current language in subsection (c)(1) specifies the types of devices that may be used in the taking of fur-bearing animals. By proposing to remove those restrictions and rely upon the prohibitions contained in current subsection (c)(2) and (3), the department believes it inadvertently would have made possible the use of virtually any device or method not specifically prohibited in subsection (c)(2) or (3). Therefore, the department chooses to retain the restrictions in the current rule. The change also includes a nonsubstantive grammatical correction in subsection (c)(2)(D), altering 'conibear' to a down style of capitalization and converting the plural 'traps' to the singular 'trap' in order to agree with the verb. In general, the changes represent an effort to simplify and clarify the regulations governing fur-bearing animals.

The amendment to §65.372, concerning Definitions, eliminates the definitions for 'commercial harvest', 'finished product,' 'fur-bearing animal,' and 'recreational harvest' because they are unnecessary. The definitions for commercial and recreational harvest are established in §65.375, and the activities permitted under the various licenses are prescribed in statute and elsewhere in regulation. The definition of 'fur-bearing' animal is defined in Parks and Wildlife Code, Chapter 71.

The amendment to §65.375, concerning Open Season; Means and Methods, eliminates the bag and possession limits for fur-bearing animals taken under a hunting license. Under current rules, there is no bag or possession limit for fur-bearing animals taken under a trapper's license during the trapping season, and persons hunting under a hunting license may take one fur-bearing animal per day, with a possession limit of two. However, because depredating fur-bearing animals by statute may be taken in any number at any time, the department believes it is unnecessary to impose bag and possession limits on persons hunting under a hunting license, since no other class of permittee is similarly restricted. The amendment also eliminates subsection (a)(3), which prohibits the sale of fur-bearing animals taken during the recreational season (i.e., under a hunting license), which is prohibited by statute, making the regulatory prohibition redundant and therefore unnecessary. The amendment also eliminates subsection (b)(3), which prohibits a trapper from possessing more than two undried pelts between April 6 and October 31. This provision is being removed because rule action in 2003 provided for year-round possession of pelts by trappers, allowing trappers to maximize economic return by retaining pelts for as long as needed to take advantage of favorable market fluctuations. Subsection (b)(3) conflicts with that action, and is being removed for that reason. The proposed amendment also removes the prohibition on the take of river otter by firearms. Staff review of the current rule reveals that it has been in effect since at least 1981, but there is no historical data to explain the original reason for its existence. Firearms are lawful for taking every other species of fur-bearing animal, and currently there is no biological reason to limit the means of take for river otter. Finally, the amendment replaces the term 'steel leghold' with 'foothold.' The term 'steel leghold' inaccurately describes these types of traps, and the International Association of Fish and Wildlife Agencies has adopted new terminology to refer to these types of traps as 'foothold' traps.

The amendment to §65.377, concerning Sale or Purchase of Fur-bearing Animals, changes subsections (a)(4) and (b)(3) by adding the word 'commercial' to those provisions. The department's intent is to prevent any misconception that trappers may retain fur-bearing animals taken outside of the commercial season or that wholesale fur dealers may purchase animals or pelts taken outside of the commercial season. The amendment also adds language to subsection (a)(5) to allow trappers to sell fur-bearing animals to buyers located outside the state in addition to wholesale fur dealers licensed by the state. Many trappers find the need to get pelts quickly to sales houses when prices are good; however, due to the small number of fur buyers in Texas, this is sometimes problematic in terms of time. The department would like to empower trappers to act quickly when prices are good.

The amendment to §65.379, concerning Reporting Requirements, adds a provision requiring trappers who sell animals or pelts directly to out-of-state purchasers to report those sales to the department on an annual basis. Under current rule, only wholesale fur dealers may purchase and resell a fur-bearing animal, and the department requires annual reports from wholesale dealers in order to track the volume of fur-bearing animals taken in the state for commercial trade, which is also used as an indirect index of furbearer populations. The amendment to §65.377 allows trappers to sell directly to out-of-state buyers; thus, that data would not be captured by wholesale dealer reports. By requiring an annual report from trappers who sell animals directly to out-of-state buyers, the department will continue to capture that data.

The amendment to §65.372, concerning Definitions, will function by eliminating the definitions for 'commercial harvest', 'finished product,' 'fur-bearing animal'and 'recreational harvest.'

The amendment to §65.375, concerning Open Season; Means and Methods, will function by eliminating the bag and possession limits for fur-bearing animals taken under a hunting license; removing provisions that repeat statutory provisions or conflict with other regulatory provisions; allowing the take of river otter by firearms; and modernizing nomenclature used to describe means and methods.

The amendment to §65.377, concerning Sale or Purchase of Fur-bearing Animals, will function by establishing consistent terminology and by allowing trappers to sell fur-bearing animals to buyers located outside the state.

The amendment to §65.379, concerning Reporting Requirements, will function by requiring trappers who sell directly to out-of-state purchasers to report those sales to the department on an annual basis.

The department received 19 comments opposing adoption of the proposal to eliminate bag and possession limits for fur-bearing animals taken under a hunting license. Comments containing specific articulations of the commenter's reasons for opposition follow.

COMMENT: There is no reason for allowing the unlimited killing of fur-bearing animals unless the department can show that the populations of all species affected by the rules are increasing or remaining stable.

RESPONSE: The agency agrees with the comment and responds that based on survey and population data, as well as data from commercial activities, the rules as adopted will not result in the harvest of fur-bearing animals at a level that could lead to depletion of any species. No changes were made as a result of the comment.

COMMENT: The department received two comments stating that bag and possession limits need to be imposed for all animals.

RESPONSE: The department disagrees with the comment and responds that bag limits are not always necessary, particularly for species for which supply far outstrips demand, as is the case for fur-bearing animals. No changes were made as a result of the comment.

COMMENT: The current law prevents the waste of furbearing animals by limiting the harvest to one furbearing animal. The proposal would allow hunters to shoot as many furbearers as they please.

RESPONSE: The department disagrees with the comment and responds that it is the intent of the commission to allow a hunter to harvest as many fur-bearing animals as he or she finds it necessary or desirable to harvest. The department does not believe that the absence of a bag limit will result in the wanton destruction of fur-bearing animals, and that there is currently no restriction on the number of fur-bearing animals that may be taken as nuisances. No changes were made as a result of the comment.

COMMENT: The proposal would allow a person to kill fur-bearing animals and give them to another person, which is not a good idea. It also allows fur-bearing animals to be used for target practice and will hurt the fur-bearing animal population, which will be bad for persons engaged in commercial use of the resource.

RESPONSE: The department disagrees with the comment and responds that the absence of a bag limit will not result in the wanton destruction of fur-bearing animals and that under current rules, there is no limit on the number of fur-bearing animals that a person may take as nuisances. The department further notes that data obtained from wholesale fur dealers indicates that an extremely small number of fur-bearing animals, in comparison to total population, are taken for commercial purposes, which means that recreational harvest would have to increase significantly for there to be any impact on populations or trappers. No changes were made as a result of the comment.

COMMENT: Trappers and wholesalers should be monitored more closely in order to find out what species are sold.

RESPONSE: The department agrees with the comment and responds that under current regulations, wholesale dealers are required to report the numbers and types of fur-bearing animals bought and sold. The rules as adopted will require the same information from trappers who sell directly to out-of-state buyers. No changes were made as a result of the comment.

COMMENT: Eliminating the bag limits can lead to overhunting.

RESPONSE: The department disagrees with the comment as it applies to fur-bearing animals, and responds that in the case of the rules as adopted, the probability of overhunting is quite low, based on the small number of persons who hunt fur-bearing animals. No changes were made as a result of the comment.

COMMENT: The rules will allow more game for road hunters, deprive fur hunters of game, promote dishonesty, and cause trapping license sales to decline.

RESPONSE: The department disagrees and responds that although there will be no bag limit on fur-bearers taken under a hunting license, the rule does not authorize anyone to take fur-bearers from a roadway, which is unlawful. The department further responds that the rationale for eliminating bag limits is based on relatively low hunting pressure on fur-bearers compared to other species. The department does not believe that hunting pressure will increase simply because bag limits are being eliminated. The department also responds that trapping license sales should not be affected by the elimination of bag limits for recreational take, since the only way that fur-bearers can be harvested for commercial purposes is under a trapper's license. No changes were made as a result of the comment.

COMMENT: Any animal taken in the course of legal hunting activities should be able to be sold under a valid hunting license and not require a special license (i.e., a trapper's license).

RESPONSE: The department disagrees with the comment and responds that the provisions of Parks and Wildlife Code, §71.005, require that a person possess a trapper's license in order to sell, barter, or exchange fur-bearing animals. This provision cannot be altered by the commission. No change was made as a result of the comment.

COMMENT: With the pressures on wildlife, this needs to be corrected the other way. No protection for mountain lions, beavers, otters, etc. is ridiculous.

RESPONSE: The department disagrees with the comment and responds that mountain lions are not classified as fur-bearers and thus are not affected by the rules as adopted. Beavers are numerous and a documented nuisance species in the eastern third of Texas. Otter populations are stable or increasing in the drainages where they occur, and department bridge surveys and wholesale fur dealer reports indicate that the populations are stable enough to withstand the current level of harvest. As has been noted in a previous response, the department believes that the removal of recreational bag limits will not lead to over hunting. No changes were made as a result of the comment.

COMMENT: The rules will lead to a waste of the resource, which will be killed and left laying.

RESPONSE: The department disagrees with the comment and responds that there is no reason to believe that wanton waste of the resource will occur simply because bag limits are eliminated. No changes were made as a result of the comment.

The department received 92 comments supporting adoption of the proposal.

The department received 20 comments opposing adoption of the proposal to allow the take of river otter by firearms. Comments containing specific articulations of the commenter's reasons for opposition follow.

COMMENT: The river otter is already in trouble throughout large sections of the U.S. The habits and reproduction of river otters are not well known, and by allowing the use of firearms (i.e., long-range killing), the number of otters killed (and not necessarily retrieved) will increase. The populations of otters have already decreased throughout Texas, due to habitat stress.

RESPONSE: The department, while sympathetic to the concerns of the comment, disagrees and responds that otter populations are stable or increasing in the drainages where they occur, and department bridge surveys and wholesale fur dealer reports indicate that the populations are robust enough to withstand the current level of harvest. The department also notes that the prohibition on the use of firearms to take river otters is being removed because the department could not determine that there was a justification for it. No changes were made as a result of the comment.

COMMENT: If limits are not imposed, the species will be lost.

RESPONSE: The department disagrees with the comment and responds that the overwhelming preponderance of otter is likely taken under trapper's permits (so that the pelts can be sold). Thus, the department is able to monitor the harvest of river otter from wholesale fur dealer reports, which are used in conjunction with ongoing otter population surveys to determine the overall status of the population. River otter populations in Texas are currently stable or expanding and under current regulations, and there are no bag limits for otter taken by trappers. No comments were made as a result of the comment.

COMMENT: Five commenters stated that otters should not be taken by firearms because ricochets are common if not normal in water and allowing the use of firearms will create a dangerous situation.

RESPONSE: The department, while appreciative and aware of the commenter's concerns about safety, responds that firearms are lawful means for the take of every other species of fur-bearing animal, as well as for exotic aquatic species, so allowing the take of otter by firearms will not create or introduce a situation any different from what is lawful at the present time. No changes were made as a result of the comment.

COMMENT: Otters killed with a firearm suffer more pelt damage, which lowers the value of the pelt. Also, unless an otter is held by a trap when dispatched with a firearm it is very difficult to retrieve the animal from the water since it will more than likely sink or dive in open water and be unretrievable.

RESPONSE: The department agrees with the comment, and responds that for those very reasons, persons taking otter for commercial purposes will probably employ means and methods other than firearms. The rule as adopted does not require otters to be taken by firearms, it simply makes firearms lawful means for the take of otter. No changes were made as a result of the comment.

COMMENT: Otters should not be taken by any means, including firearms.

RESPONSE: The department disagrees with the comment and responds it is the policy of the commission to provide the maximum hunting opportunity possible to the citizens of the state, within the tenets of sound biological management. No changes were made as a result of the comment.

COMMENT: Rules prescribing means and methods should require non-toxic shot or lead-free ammunition when taking fur-bearers on water bodies.

RESPONSE: The department disagrees with the comment and responds that the numbers of persons hunting fur-bearers by firearms on water bodies is very small and therefore unlikely to be a contributing factor to environmental issues associated with lead. No changes were made as a result of the comment.

COMMENT: Two commenters stated that they had never seen an otter in the wild.

RESPONSE: The department infers from the comment that the commenters are concerned that otters are rare or endangered. If that is the case, the department disagrees with the comments and responds that otter populations are stable or increasing in the drainages where they to occur, and department bridge surveys and wholesale fur dealer reports indicate that the populations are stable enough to withstand the current level of harvest. No changes were made as a result of the comments.

The department received 78 comments supporting adoption of the proposal.

The department received 10 comments opposing adoption of the proposal to allow trappers to sell fur-bearing animals directly to out-of-state buyers. Comments containing specific articulations of the commenter's reasons for opposition follow.

COMMENT: The world would be a better place if the fur trade just disappeared.

RESPONSE: The department disagrees with the comment and responds that responsible use of the fur-bearing animal resources of the state is consistent with commission policy and statutory authority provided to the commission. No changes were made as a result of the comment.

The department received 99 comments supporting adoption of the proposal.

Sportsmen Conservationists of Texas supported adoption of the rules as amended.

The rules are adopted under the authority of Parks and Wildlife Code, §71.002, which authorizes the commission to regulate the taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of fur-bearing animals, pelts, and carcasses as the commission considers necessary to manage fur-bearing animals or to protect human health or property, including provisions governing permit application forms, fees, procedures, and reports, the periods of time when it is lawful to take, possess, sell, purchase, or transport fur-bearing animals, pelts, and carcasses, catch and possession limits for fur-bearing animals and pelts, and the means, methods, manner and places in which it is, lawful to take or possess fur-bearing animals, pelts, or carcasses.

*§65.375. Open Seasons; Means and Methods.*

(a) Recreational harvest.

(1) The open season for the recreational harvest of fur-bearing animals is September 1 of one year to August 31 of the following year.

(2) There are no bag or possession limits for fur-bearing animals taken during the open season for recreational harvest.

(b) Commercial harvest.

(1) The open season for the commercial harvest of fur-bearing animals is November 1 of one year through March 31 of the following year. Nutria may be taken from September 1 through August 31 of the following year.

(2) There are no bag or possession limits.

(c) Means and methods.

(1) Only the following means and methods are legal for taking fur-bearing animals:

(A) firearms;

(B) steel leghold and conibear-style traps;

(C) falconry;

(D) live or box trap;

(E) dogs;

(F) snare;

(G) lawful archery equipment;

(H) electronic or hand-held calls; and

(I) artificial light.

(2) Exceptions. No person may:

(A) take fur-bearing animals with foothold or conibear-style traps, except during the open season for commercial harvest or as provided in §65.381 of this title (relating to Nuisance Fur-bearing Animals);

(B) set foothold or conibear-style traps within 400 yards of any school;

(C) use smoke, explosives or chemical irritants of any kind to harry or flush fur-bearing animals;

(D) use a conibear-style trap with a diagonal opening dimension greater than ten inches shall not be set on land or in less than six inches of water;

(E) use snares, steel leghold traps, conibear-style traps, and live or box traps unless each trap is examined at least every 36 hours; or

(F) fail to remove animals from taking devices upon discovery.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 30, 2004.

TRD-200405474
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: September 19, 2004
Proposal publication date: April 23, 2004
For further information, please call: (512) 389-4775

♦ ♦ ♦

# TITLE 43. TRANSPORTATION

## PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

### CHAPTER 4. EMPLOYMENT PRACTICES
### SUBCHAPTER E. SICK LEAVE POOL PROGRAM

**43 TAC §4.51, §4.56**

The Texas Department of Transportation (department) adopts amendments to §4.51 and §4.56, concerning definitions and withdrawals under the department's Sick Leave Pool Program. The amendments to §4.51 and §4.56 are adopted without changes to the proposed text as published in the July 9, 2004, issue of the *Texas Register* (29 TexReg 6605) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Government Code, Chapter 661, directs the department's executive director to develop and implement a sick leave pool program. The amendments make clerical changes, update existing language, and revise existing definitions. These changes improve the readability of the department's sick leave pool program rules, increase the responsiveness of the program, make program rules more compatible with existing department policies, and more specifically tailor the program to ensure that leave is available to those dealing with a catastrophic illness or injury.

Section 4.51(4) is amended to expand the definition of "discipline" to include the full range of disciplinary actions available under the department's Human Resources Manual. Section 4.51(8) is amended to update the name of the Texas Department of Family and Protective Services. Section 4.51(12) is amended to revise the definition of "severe physical condition" to change from 10 to 12 the number of continuous weeks an employee will likely be off work.

These definitional changes allow the department to clarify the department's compliance with Government Code, §661.001, coordinate sick leave pool policy with existing human resources policies, and more precisely target those illnesses or injuries for which employees may apply for sick leave pool hours.

Section 4.56(a)(1) is amended to provide that employees may only seek to withdraw time from the sick leave pool when they or their family members have a catastrophic illness or injury and that illness or injury is the reason why the employee must be away from work. Existing versions of this rule imply the requirement that the leave request be connected to the illness or injury and this revision clarifies the department's compliance with Government Code, §661.005.

Subsection 4.56(a)(2) is amended to add the requirement that the medical certification describing a catastrophic illness or injury of an employee's family member must include the type of assistance the employee will need to provide the ill family member. This change allows the department to better administer the program by matching an employee's need for sick leave pool time with the circumstances of the family member's illness or injury. This change is consistent with the requirement in Government Code, §661.004, that sick leave pool time be granted to employees "because of" a catastrophic illness or injury.

Section 4.56(a)(15) is amended to remove language regarding the circumstances in which a recertification of a medical condition may be necessary. The amendment allows the pool administrator to request a recertification on a monthly basis, if necessary. This amendment is authorized by Government Code, §661.002.

COMMENTS

Comments were received from 16 individuals and are addressed as follows. Some comments received were of a general nature and did not particularly concern the amendments.

Comment: Two commenters expressed concern of employees who abuse the sick leave pool program by not saving their own sick leave and vacation time.

Response: The department does not require an employee to maintain a sick leave or vacation balance to be eligible for any department benefit.

Comment: One commenter suggested changing the word "patient" to "person" or "sick or injured person" throughout the rules.

Response: The term "patient" has not raised ambiguities in the past and there is no substitute phrase that would be equally precise and understandable. Therefore, no changes to the rules will be made.

Comment: One commenter suggested taking into consideration the applicant's previous sick leave/vacation history, especially

employees who consistently carry a zero balance. Two commenters suggested that employees not be able to withdraw from the pool if they have not donated to the pool. Another commenter suggested requiring service time to qualify for sick leave pool.

Response: The revisions suggested would not be consistent with Government Code, Chapter 661, which specifies that all employees are eligible to apply for leave from the sick leave pool.

Comment: One commenter expressed concern with people who seem to play the system for personal benefit and suggested there should be an attendance calculation in place for before the incident, such as proof of low absenteeism during their department career.

Response: Requiring that employees have a leave balance to qualify for hours from the sick leave pool would not be consistent with Government Code, Chapter 661, which specifies that all employees are eligible to apply for leave from the sick leave pool.

Comment: One commenter asked if he could transfer some of his accrued sick leave to his spouse so she could take off if their children were sick. He has more state service time and has a larger sick leave balance.

Response: State law does not allow sick leave to be transferred to another employee.

Comment: One commenter expressed concern that only 24 hours of sick leave can be donated by an employee per year.

Response: Government Code, §661.003, allows a minimum of eight hours to be donated to the sick leave pool with no limit to the maximum number of hours donated.

Comment: One commenter suggested adding "approximate" to the date a person will be able to return to normal duties or activities of daily living.

Response: The comment refers to a provision that is already included on the form requesting an estimated date which is completed by the health care provider and does not need to be addressed in the sick leave pool rules.

Comment: One commenter asked how sick leave pool administrators are selected.

Response: The responsibility of the sick leave pool administrator is designated as a primary job responsibility within the department's Human Resources Division.

Comment: One commenter suggested defining abuse of sick leave or providing examples of abuse of sick leave so employees would know what is expected.

Response: These definitions are adequately addressed in policy materials, and does not need to be addressed in the sick leave pool rules.

Comment: One commenter questioned the responsibility of the pool administrator who is not a medically-trained individual to determine if an employee qualifies for sick leave pool.

Response: The information received from the medical doctor on the health certification gives the pool administrator the information needed to determine whether the criterion for sick leave pool has been met according to the sick leave pool rules. If further information is needed, the pool administrator relies on the medical review board contracted through the department.

Comment: One commenter suggested that there be incentives, either in monetary means, time off, or public recognition, for employees to contribute their large or moderate sick leave balances to the pool.

Response: Government Code, Chapter 661, does not provide for incentives, and therefore no change in the rules is required.

Comment: One commenter suggested adding text to §4.51(3) to ensure that any additional catastrophic condition resulting from the primary catastrophic condition will be covered under the sick leave pool rules.

Response: The comment refers to a definition that is adequately addressed in the department's rules under §4.51(3) and does not need further clarification.

Comment: With reference to §4.51(7), one commenter suggested adding a separate definition for vacation/sick leave coordinator because the function may not always be performed by the human resources officer.

Response: The leave tracking function is sometimes performed by a human resources officer or another person in the human resources office. Changing this definition is not necessary as human resources officer is inclusive of all human resources office personnel.

Comment: With reference to §4.51(7), one commenter suggested revisions to the definition of human resources officer due to the campus model or suggested revising human resource officer to Human Resources Division. The commenter further suggested that a supervisor be able to assist employees with sick leave information.

Response: Each campus has a human resources officer and additional human resources staff. The function is the same whether or not the individual is housed in a division or a district. Assisting employees is a supervisor responsibility and does not need to be addressed as part of the sick leave pool rules.

Comment: With reference to §4.51(8), one commenter suggested adding legal guardian to the definition of immediate family, including someone not living in the same household. Another commenter suggested adding parent-in-law with no other living relative to the definition of immediate family, including someone not living in the same household.

Response: The definition of immediate family is in compliance with the Government Code, Chapter 661, which governs this program.

Comment: With reference to §4.51(12), two commenters expressed concern that changing the eligibility criteria from 10 weeks to 12 weeks will not accomplish the department's intent to eliminate employee abuse of the sick leave pool.

Response: The increase of the eligibility from 10 weeks to 12 weeks will enable the department to conserve sick leave pool hours and prevent the occurrence of abuse by more precisely targeting those illnesses or injuries for which employees may apply for sick leave pool hours.

Comment: With reference to §4.51(12), one commenter expressed concern that a "severe medical condition" may exist that may not "likely result in death" or that may cause the employee to be off work less than 12 weeks and that the definition should be based more on the severity of the illness/injury, and not how much time the employee would be off work; and that being off

the payroll for just one or two weeks could be devastating to some families.

Response: The department recognizes that an absence of less than 12 weeks could be devastating to many and the department considers a combination of the condition's life threatening nature and its duration as the standards to assist the most severely affected employees.

Comment: One commenter suggested adding another definition of severe psychological condition to §4.51(13) as "(C) Internment for psychological illness and/or neurological/psychological treatment of medical depression."

Response: The comment refers to a definition that has already been adequately addressed using plain language and has not posed a significant problem.

Comment: With reference to §4.56(a)(2)(A), one commenter suggested adding a requirement regarding the patient's need for assistance.

Response: The text changes submitted by the commenter are not necessary because the information required for approval of sick leave pool hours is for those employees who need to provide basic care for daily activities for a family member as designated by the health care provider inside or outside of an institution.

Comment: With reference to §4.56(a)(10), one commenter suggested adding that an employee's regular accrued sick leave must be used each month before intermittent sick leave pool hours could be used.

Response: The comment refers to a provision that is already in the department's rules and has not been changed by these amendments. Employees who are granted sick leave pool hours to be used intermittently are required to use their accrued sick leave each month before using hours from the sick leave pool.

Comment: With reference to §4.56(a)(10), one commenter stated she had been required six years ago to use all her accrued sick leave, compensation time, and vacation hours before receiving hours from the sick leave pool and asked if there had been a change.

Response: The rules were changed in November 2000 to state that employees only needed to exhaust their accrued sick leave prior to receiving sick leave pool hours if they met all other criteria.

Comment: With reference to §4.56(a)(16), one reviewer commented that nothing addresses what to do with sick leave pool hours transferred to an employee's sick leave account because of a catastrophic illness of a family member and when the sick family member dies before the awarded sick leave pool hours are exhausted. The commenter suggested adding information to address this situation.

Response: The comment refers to provisions that already exist. The rules state that the pool administrator requires unused portions of the approved hours to be returned to the pool if the medical condition ceases to exist. These hours are returned to the sick leave pool and the employee is granted the appropriate amount of emergency leave.

Comment: With reference to §4.56(b)(1), one commenter suggested adding text to show that the employee and/or the human resources officer will assist in completing the application for withdrawal.

Response: Assisting employees is a human resource officer's responsibility and does not need to be addressed as part of the sick leave pool rules.

Comment: With reference to §4.56(b)(2), one commenter suggested adding text to cover an alternate delivery method of the certification form.

Response: It is the responsibility of the employee to provide the pool administrator with the necessary documents with any delivery method. The delivery method should not be addressed as part of the sick leave pool rules.

Comment: With reference to §4.56(b)(2), one commenter questioned the deadline for submitting the provider's certification.

Response: The comment refers to a provision that is addressed in the department's rules under §4.56(b)(2).

Comment: With reference to §4.56(b)(3), one commenter suggested reducing the time the Employee Relations Section has for processing sick leave pool requests from five working days to three.

Response: The five working days allows adequate time for research necessary to process sick leave pool requests and has not posed a significant problem.

Comment: With reference to §4.56(b)(4), one commenter questioned who would arbitrate disagreements about a sick leave pool decision.

Response: The comment refers to a provision that is already addressed in the department's rules under §4.56(b)(4).

Comment: With reference to §4.56(b)(5)(C), one commenter questioned how the pool administrator determined the facts necessary to prove that an employee was not following the prescribed treatment.

Response: The human resource officer can provide additional facts from the employee, or the pool administrator can request the medical records of the patient and submit the information to the medical review board contracted through the department.

Comment: With reference to §4.56(b)(5)(D), one commenter questioned how the pool administrator determined the facts necessary to prove that an employee was abusing sick leave pool hours.

Response: It is the responsibility of the human resource officer to provide documentation formally disciplining the abuse of sick leave as described in §4.56(b)(5)(D)of the pool rules.

Comment: With reference to §4.51(1), one commenter recommended changing the first part of the sentence to read "A severe physical condition…" and "A severe psychological condition…" to comply with definitions on §4.51(12) and (13).

Response: The comment references a definition that has been adequately addressed using plain language and has not posed a significant problem. It is not necessary to change at this time.

Comment: With reference to §4.56(a)(1), one commenter suggested that it was not clear who was responsible for submitting the request, the health care provider or the employee, until a later section of the rules.

Response: The rules do not require that the request come from any specific person.

Comment: With reference to §4.56(a)(12), one commenter recommended adding a definition of "extended sick leave" to the definitions section.

Response: The term extended sick leave does not appear in the sick leave pool rules, and therefore, does not need to be defined.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Government Code, §661.002(c) which provides that the governing body of a state agency shall adopt rules and prescribe procedures relating to the operation of the agency sick leave pool.

CROSS REFERENCE TO STATUTE: Government Code, Chapter 661, Subchapter A.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405404
Richard D. Monroe
General Counsel
Texas Department of Transportation
Effective date: September 16, 2004
Proposal publication date: July 9, 2004
For further information, please call: (512) 463-8630

♦ ♦ ♦

## CHAPTER 23. TRAVEL INFORMATION

The Texas Department of Transportation (department) adopts amendments to §23.1 and §23.2, concerning general provisions; §23.10, §23.12, and §23.14, concerning travel information; §§23.26, 23.28, and 23.29, concerning *Texas Highways* magazine; and the repeal of §23.11, concerning InfoBords. The amendments to §23.14 are adopted with changes to the proposed text as published in the June 11, 2004, issue of the *Texas Register* (29 TexReg 5760). The amendments to §§23.1, 23.2, 23.10, 23.12, 23.26, 23.28, and 23.29, and the repeal of §23.11 are adopted without changes to the proposed text as published in the June 11, 2004, issue of the *Texas Register* (29 TexReg 5760) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS AND REPEAL

Section 23.1 describes the purpose for Chapter 23, Travel Information. The section is amended to correctly reflect the name of the Travel Division and the current organization of the department. Legal citations in this section and throughout Chapter 23 are amended to cite Transportation Code, Chapter 204.

Section 23.2 is amended to correctly define the Texas Highways Travel Discount Card. This revision will eliminate confusion with other travel discount passport programs. The definitions of "director" and "division" are amended to update the name of the Travel Division.

Section 23.10 describes department policies and procedures relating to the production, development, printing, advertising content, and distribution of travel literature. This section is amended to more accurately reflect items or points of interest for inclusion in department travel literature, to standardize and clarify the response to consumer complaints, to clarify distribution of multiple quantities of travel literature, to more accurately reflect acceptable subjects for advertising in department travel literature, and to streamline the process of publication of advertiser information. These revisions will define criteria for inclusion in department travel literature that requires the subject matter be of interest to a broad cross section of travelers; clarify that the removal of subject matter from department travel literature will occur in the state's official travel web site and in all literature, not just a single publication; save the department money since a rate card is a more economical way to deliver advertising rate information than a media kit, and an invitation to receive a sample copy of a publication is provided rather than an actual sample copy; allow for in-person, on-premise delivery of certain insertion orders (orders for paid advertising) in department travel literature; and save money by not requiring the department to mail out reminders of advertising space deadlines and rates.

Section 23.12 describes department policies and procedures relating to the publication of the Texas Official Travel Map. This section is amended to allow a port of entry to be included on the inset side of the map. This revision will clarify why the department chooses an area as an inset.

Section 23.14 establishes the policies and procedures governing the acceptance, display, and distribution of travel literature and other promotional items by the department's travel information centers. This section is amended to allow for the distribution of traveler safety information and to clarify types of unacceptable travel literature. These revisions will allow for the distribution of literature on such topics as driving laws and fines, seatbelts, drinking and driving, and passing emergency vehicles; will prohibit travel literature that is solely for the purpose of selling a single, tangible item; and will prohibit the placement of posters and banners on the walls in a travel information center. Section 23.14(f)(1)(A) is amended to change "travel center manager" to "travel center supervisor" to be consistent with current department terminology. Section 23.14(g) is amended to correct a legal cite to the Code of Federal Regulations.

Section 23.14(f)(1)(A) is adopted with changes to change "travel center manager" to "travel center supervisor" to be consistent with current department terminology.

Section 23.26 establishes the Texas Highways Magazine Discount Card Program to promote paid circulation of *Texas Highways* magazine and to enable magazine subscribers to obtain travel-related goods and services at discounted prices. This section currently requires payment of a one dollar fee for a replacement discount card. The amendment removes this fee and provides that replacement cards will be provided free of charge. This revision will save the department money since the cost of handling the payment transaction is more expensive than simply replacing the card, provides friendlier customer service, and encourages travel within the state of Texas by use of the card.

Section 23.26(d)(1) establishes business eligibility for participation in the Texas Highways Magazine Discount Card Program. This section is amended to further detail the participation categories and to clarify business eligibility and participation by adding the term "events" so that an admission discount to an event would be considered eligible for the program. This revision will add additional value to the discount card by providing more travel discount possibilities and encourage travel within the state of Texas since events are a key tourism and travel element.

Section 23.26(d)(2)(A) prohibits the participation of certain businesses in the Texas Highways Magazine Discount Card Program. Paragraph (2)(A) is amended to allow a business that sells products or services relating to out-of-state travel-tourism features, sites, destinations facilities, and services to participate in the program if those products or services augment Texas travel or tourism or if they are border locations with ties to Texas. This revision will expand the number of participants in the program, provide travelers with more possibilities for use of the discount card, and allow more participation by border locations.

Section 23.26(e) provides that to participate in the program, an eligible business must make application and then sign an agreement with the department to abide by terms and conditions prescribed by the department and requires the department to publish a list of participants in the magazine. This section is amended to eliminate the application; require a signed listing which outlines the department's terms and conditions be submitted to the publisher of the magazine or the publisher's designated agent; allow a vendor to contract with the department through a competitive bid process to solicit eligible businesses for participation in the program. Subsection (f) is amended to allow the department to provide the list of participants in supplement digest form and on the magazine's web site. These revisions will eliminate unnecessary paperwork, streamline the process of obtaining participants in the program, allow for outsourcing the solicitation process, and provide alternative outlets for the information.

Section 23.26(g) provides for the removal of a business from the program based on noncompliance with the business' stated amount or nature of its discount. This section is amended to add that a business may be removed from the program due to consumer complaints and to outline the removal process. These revisions will clarify how and why the department removes a participating business.

Section 23.28 provides for the use of subscriber and purchaser information of *Texas Highways* magazine customers. This section is amended to clarify the use of this information and provides for the department to learn about the reading and purchasing habits of subscribers. This revision will allow the department to collect and share demographic profile information with potential advertisers since this information is used for advertising decisions.

Section 23.29 describes department policies and procedures relating to the advertising content of *Texas Highways* magazine. This section is amended to standardize and clarify the response to consumer complaints.

Section 23.11 provided for the design and placement of travel panels, referred to as InfoBords, in highway rest areas to inform travelers about sites of interest in the vicinity. InfoBords, which contain specific information, have been discontinued and replaced by scenic photographs since these panels included information that was difficult to keep updated and expensive to replace. Since InfoBords have been discontinued, §23.11 is repealed.

COMMENTS

No comments were received on the proposed amendments and repeals. However, §23.14(f)(1)(A) is adopted with a change to update "travel center manager" to "travel center supervisor" to be consistent with current department terminology.

## SUBCHAPTER A. GENERAL PROVISIONS

**43 TAC §23.1, §23.2**

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE: Transportation Code, Chapter 204.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405405
Richard D. Monroe
General Counsel
Texas Department of Transportation
Effective date: September 16, 2004
Proposal publication date: June 11, 2004
For further information, please call: (512) 463-8630

♦ ♦ ♦

## SUBCHAPTER B. TRAVEL INFORMATION

**43 TAC §§23.10, 23.12, 23.14**

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE: Transportation Code, Chapter 204.

*§23.14. Display of Travel Literature in the Texas Travel Information Centers.*

(a) Purpose. This section establishes the policies and procedures governing the acceptance, display, and distribution of travel literature and other promotional items by the department's travel information centers.

(b) Definition. For purposes of this section the term "travel literature" includes descriptive materials, pamphlets, booklets, videos, photos, icons, and promotional items.

(c) Policy for racks and display cases.

(1) General. Travel literature accepted and displayed in a travel information center:

(A) must be approved for display by the director or the director's designee;

(B) must be 100% travel and tourism-oriented;

(C) must be of a professional quality; and

(D) may contain coupons, prizes, or contests related to travel and tourism.

(2) Subject matter. Travel literature must contain subject matter relating to:

(A) recreation;

(B) scenic areas;

(C) historic sites;

(D) the arts, including museums;

(E) fairs, festivals, or special events of public interest;

(F) accommodations, including, but not limited to, bed and breakfasts and guest ranches;

(G) restaurants;

(H) shopping centers, malls, or outlet stores;

(I) RV parks and campgrounds;

(J) city, county, state, and national parks;

(K) travel maps or public transportation information; or

(L) traveler safety.

(3) Size. Travel literature must meet size criteria established by the division.

(d) Policy specific to display cases.

(1) Acceptance. An organization or individual may submit a proposal for the use of promotional graphics, photographs, icons, and other promotional items in a display case to promote Texas travel and tourism opportunities. Proposals will be accepted on a first come, first served basis. Displays will be rotated and a waiting list per location will be established.

(2) Agreement. Prior to the department accepting materials for use in a display case, the individual or organization must enter into a written agreement with the department for a period of not less than six months.

(3) Content. Display case materials shall focus on promoting tourism that stimulates travel to a specific region or metropolitan area, and shall not contain:

(A) dated material; or

(B) special events, promotions, or facilities that are only open to groups and not individuals.

(4) Cost. Materials for display cases must be provided to the department free of charge.

(5) Specifications. An individual or organization submitting materials approved for display shall provide:

(A) five horizontal transparencies which are 16 inches high and 20 inches wide;

(B) six horizontal transparencies which are 11 inches high and 14 inches wide; and

(C) three vertical transparencies which are 11 inches wide and 14 inches high.

(e) Unacceptable travel literature. In addition to the requirements of subsections (c) and (d) of this section, the department will not accept travel literature that:

(1) is solely for the purpose of selling a single, tangible item, including, but not limited to, a brochure selling a tape, CD, magazine, or cookbook, with the exception of Texas Highways, the state's official travel magazine;

(2) is solely for the purpose of promoting facilities or other subjects not directly related to travel and tourism;

(3) contains terminology, advertising, or pictures that are adult or sexually-oriented or are otherwise not directly related to family-oriented travel or tourism;

(4) promotes or describes in-state locations, destinations, facilities, accommodations, or attractions not regularly accessible (open) to the general public year-round except for attractions or destinations that open seasonally because of weather conditions;

(5) is for display on the wall, including, but not limited to, a poster or banner; or

(6) is for the purpose of promoting out-of-state travel and tourism activities, destinations, facilities, attractions, and services that do not augment Texas travel and tourism, unless the travel literature:

(A) is regional and contains 51% or more information on Texas travel and tourism;

(B) is an accommodation guide which has hotel/motel information on Texas properties along with hotel/motel information on other states; or

(C) concerns the City of Texarkana, which is located in both Texas and Arkansas and shares a single chamber of commerce, and produces a combined information brochure.

(f) Display and distribution.

(1) Display. Private sector travel literature will be:

(A) displayed in a manner which the travel information center supervisor believes is the most efficient and informative for the visitor;

(B) displayed in a manner which gives more exposure to destinations near the travel information center or to destinations in high demand;

(C) displayed in season, if it is of a seasonal nature; and

(D) rotated periodically to provide exposure for all travel interests.

(2) Updating travel literature. New private sector travel literature will replace the old travel literature on display when a new date appears on the brochure or when substantial changes have been made to the item. Outdated travel literature will not be sent back to the original establishment, but will be disposed of through a recycling program or the most appropriate manner.

(3) Promotional items. Promotional posters or items will not be accepted for display or distribution without the written approval of the director or the director's designee.

(g) Vending machines. The sale of souvenirs and other related commercial items is prohibited at the travel information centers. In accordance with Title 23, Code of Federal Regulations, Part 752, the department may permit vending machines in centers for the purposes of dispensing food, drink, and other articles that it determines appropriate and desirable. No charge to the public may be made for goods and services except for telephone and articles dispensed by such vending machines. The Texas Commission for the Blind has first right of refusal to operate vending machines in travel information centers.

(h) Non-department use of travel information centers.

(1) Request. An organization or individual wanting to do an on-site promotion at a travel information center rest area must submit a request in writing. Requests will be accepted on a first come, first served basis.

(2) Agreement. Prior to the department allowing on-site promotions, the organization or the individual must enter into a written agreement with the department agreeing to abide by the requirements of this subsection.

(3) Activity.

(A) Rest stop activities shall be conducted in a manner which will cause the least interference with the travel information center's operation and picnic or rest area.

(B) Alcoholic beverages are prohibited.

(C) All non-alcoholic refreshments and or promotional items offered at the rest stop must be free of charge to visitors.

(4) Signs.

(A) The organization or individual shall prominently display a sign indicating that all drinks, refreshments, services, and items provided are free of charge.

(B) Any signs associated with the refreshment rest stop, with the exception of those stated in subparagraph (A) of this paragraph, shall be limited to only those necessary to identify the organization and normal ownership signs permanently affixed to trailers, vehicles, tents, and other equipment directly associated with the operation of the rest stop.

(C) Any signs to be used or installed for the refreshment rest stop, including advance signs advising motorists of the refreshment rest stop, must receive prior approval of the director or the director's designee. An approved sign may not be attached to or interfere with the travel information center's operation or highway signs.

(5) Services. The department will not furnish utilities, except where explicitly designed to be provided for this purpose.

(6) Cleanup. Cleanup of the facilities used for the refreshment rest stop during and immediately afterward is the responsibility of the organization.

(7) Compliance. The department will monitor or check periodically for compliance with the requirements of this subsection. Noncompliance may call for immediate cancellation of refreshment rest stop activities and may be the basis for refusing future requests.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405406
Richard D. Monroe
General Counsel
Texas Department of Transportation
Effective date: September 16, 2004
Proposal publication date: June 11, 2004
For further information, please call: (512) 463-8630

♦ ♦ ♦

**43 TAC §23.11**

STATUTORY AUTHORITY

The repeal is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE: Transportation Code, Chapter 204.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405407
Richard D. Monroe
General Counsel
Texas Department of Transportation
Effective date: September 16, 2004
Proposal publication date: June 11, 2004
For further information, please call: (512) 463-8630

♦ ♦ ♦

## SUBCHAPTER C. TEXAS HIGHWAYS MAGAZINE

**43 TAC §§23.26, 23.28, 23.29**

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE: Transportation Code, Chapter 204.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 27, 2004.

TRD-200405408
Richard D. Monroe
General Counsel
Texas Department of Transportation
Effective date: September 16, 2004
Proposal publication date: June 11, 2004
For further information, please call: (512) 463-8630

♦ ♦ ♦

# TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register.* The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

## Department of State Health Services

Rule Transfer

Through the enactment of House Bill 2292, 78th Legislature, R.S. (2003), the Governor and the legislature have directed the Texas Health and Human Services Commission (HHSC) to consolidate the organizational structures and functions of the health and human services agencies, eliminate duplicative administrative systems, and streamline processes and procedures that guide the delivery of health and human services to Texans. House Bill 2292 abolished certain agencies and created new ones. As part of the consolidation, the administrative rules of the legacy agencies will transfer either to a new agency or to HHSC.

House Bill 2292 created the new Department of State Health Services (DSHS) and transferred certain of the respective powers, duties, functions, programs, and activities of the Texas Department of Health (TDH), Texas Department of Mental Health and Mental Retardation (TDMHMR), Texas Health Care Information Council (HCIC), and Texas Commission on Alcohol and Drug Abuse (TCADA) to the new agency. The agency rules associated with those duties and activities will be transferred and reorganized under Title 25, Part 1 of the *Texas Administrative Code.*

The transfer is effective September 1, 2004.

Please refer to the conversion charts that outline the rule transfers from TDMHMR, HCIC, and TCADA to the new Department of State Health Services. The TDH rules will remain in Title 25, Part 1 with their current rule numbers.

Figure: 25 TAC Part 2

Figure: 25 TAC Part 16

Figure: 40 TAC Part 3

TRD-200405427

♦ ♦ ♦

## Department of Aging and Disability Services

Rule Transfer

Through the enactment of House Bill 2292, 78th Legislature, R.S. (2003), the Governor and the legislature have directed the Texas Health and Human Services Commission (HHSC) to consolidate the organizational structures and functions of the health and human services agencies, eliminate duplicative administrative systems, and streamline processes and procedures that guide the delivery of health and human services to Texans. House Bill 2292 abolished certain agencies and created new ones. As part of the consolidation, the administrative rules of the legacy agencies will transfer either to a new agency or to HHSC.

House Bill 2292 created the new Department of Aging and Disability Services (DADS) and transferred certain of the respective powers, duties, functions, programs, and activities of the Texas Department of Human Services (DHS), Texas Department of Mental Health and Mental Retardation (TDMHMR), and Texas Department on Aging (TDoA) to the new agency. The agency rules associated with those duties and activities will be transferred and reorganized under Title 40, Part 1 of the *Texas Administrative Code.*

The transfer is effective September 1, 2004.

Please refer to the conversion charts that outline the rule transfers from TDMHMR and TDoA to the new Department of Aging and Disability Services. The DHS rules will remain in Title 40, Part 1 with their current rule numbers.

Figure: 25 TAC Part 2

Figure: 40 TAC Part 9

TRD-200405428

♦ ♦ ♦

## Texas Department of Health

Rule Transfer

Through the enactment of House Bill 2292, 78th Legislature, R.S. (2003), the Governor and the legislature have directed the Texas Health and Human Services Commission (HHSC) to consolidate the organizational structures and functions of the health and human services agencies, eliminate duplicative administrative systems, and streamline processes and procedures that guide the delivery of health and human services to Texans. House Bill 2292 abolished certain agencies and created new ones. As part of the consolidation, the administrative rules of the legacy agencies will transfer either to a new agency or to HHSC.

House Bill 2292 abolished the Texas Department of Health (TDH) and transferred certain of its powers, duties, functions, programs, and activities to the new Department of State Health Services (DSHS). The TDH rules associated with those duties and activities will continue to reside in Title 25, Part 1 of the *Texas Administrative Code.* The chapter and section numbers of rules remaining in Title 25, Part 1 will not change; however, the name of the part will change to "Department of State Health Services."

The transfer is effective September 1, 2004.

TRD-200405429

♦ ♦ ♦

## Texas Department of Mental Health and Mental Retardation

Rule Transfer

Through the enactment of House Bill 2292, 78th Legislature, R.S. (2003), the Governor and the legislature have directed the Texas Health and Human Services Commission (HHSC) to consolidate the organizational structures and functions of the health and human services agencies, eliminate duplicative administrative systems, and streamline processes and procedures that guide the delivery of health

and human services to Texans. House Bill 2292 abolished certain agencies and created new ones. As part of the consolidation, the administrative rules of the legacy agencies will transfer either to a new agency or to HHSC.

House Bill 2292 abolished the Texas Department of Mental Health and Mental Retardation (TDMHMR) and transferred certain of its powers, duties, functions, programs, and activities to the new Department of State Health Services (DSHS) and the new Department of Aging and Disability Services (DADS). TDMHMR rules transferring to DSHS will be reorganized under Title 25, Part 1 of the *Texas Administrative Code.* TDMHMR rules transferring to DADS will be reorganized under Title 40, Part 1. Some TDMHMR rules will be duplicated in Title 25, Part 1 and Title 40, Part 1.

The transfer is effective September 1, 2004.

Please refer to Figure: 25 TAC Part 2 for the conversion chart for TDMHMR rules transferred to DSHS and DADS.

Figure: 25 TAC Part 2

TRD-200405430

♦ ♦ ♦

## Texas Health Care Information Council

Rule Transfer

Through the enactment of House Bill 2292, 78th Legislature, R.S. (2003), the Governor and the legislature have directed the Texas Health and Human Services Commission (HHSC) to consolidate the organizational structures and functions of the health and human services agencies, eliminate duplicative administrative systems, and streamline processes and procedures that guide the delivery of health and human services to Texans. House Bill 2292 abolished certain agencies and created new ones. As part of the consolidation, the administrative rules of the legacy agencies will transfer either to a new agency or to HHSC.

House Bill 2292 abolished the Texas Health Care Information Council (HCIC) and transferred certain of its powers, duties, functions, programs, and activities to the new Department of State Health Services (DSHS). All HCIC administrative rules will transfer from Title 25, Part 16 of the *Texas Administrative Code* to DSHS and will be reorganized under Title 25, Part 1.

The transfer is effective September 1, 2004.

Please refer to Figure: 25 TAC Part 16 for the complete conversion chart.

Figure: 25 TAC Part 16

TRD-200405431

♦ ♦ ♦

## Texas Department of Human Services

Rule Transfer

Through the enactment of House Bill 2292, 78th Legislature, R.S. (2003), the Governor and the legislature have directed the Texas Health and Human Services Commission (HHSC) to consolidate the organizational structures and functions of the health and human services agencies, eliminate duplicative administrative systems, and streamline processes and procedures that guide the delivery of health and human services to Texans. House Bill 2292 abolished certain agencies and created new ones. As part of the consolidation, the administrative rules of the legacy agencies will transfer either to a new agency or to HHSC.

House Bill 2292 abolished the Texas Department of Human Services (DHS) and transferred certain of its powers, duties, functions, programs, and activities to the new Department of Aging and Disability Services (DADS). The DHS rules associated with those duties and activities will continue to reside in Title 40, Part 1 of the *Texas Administrative Code.* The chapter and section numbers of the rules remaining in Title 40, Part 1 will not change; however, the name of the part will change to "Department of Aging and Disability Services."

The transfer is effective September 1, 2004.

TRD-200405432

♦ ♦ ♦

## Texas Commission on Alcohol and Drug Abuse

Rule Transfer

Through the enactment of House Bill 2292, 78th Legislature, R.S. (2003), the Governor and the legislature have directed the Texas Health and Human Services Commission (HHSC) to consolidate the organizational structures and functions of the health and human services agencies, eliminate duplicative administrative systems, and streamline processes and procedures that guide the delivery of health and human services to Texans. House Bill 2292 abolished certain agencies and created new ones. As part of the consolidation, the administrative rules of the legacy agencies will transfer either to a new agency or to HHSC.

House Bill 2292 abolished the Texas Commission on Alcohol and Drug Abuse (TCADA) and transferred certain of its powers, duties, functions, programs, and activities to the new Department of State Health Services (DSHS). All TCADA administrative rules will transfer from Title 40, Part 3 of the *Texas Administrative Code* to DSHS and will be reorganized under Title 25, Part 1.

The transfer is effective September 1, 2004.

Please refer to Figure: 40 TAC Part 3 for the complete conversion chart.

Figure: 40 TAC Part 3

TRD-200405433

♦ ♦ ♦

## Texas Department on Aging

Rule Transfer

Through the enactment of House Bill 2292, 78th Legislature, R.S. (2003), the Governor and the legislature have directed the Texas Health and Human Services Commission (HHSC) to consolidate the organizational structures and functions of the health and human services agencies, eliminate duplicative administrative systems, and streamline processes and procedures that guide the delivery of health and human services to Texans. House Bill 2292 abolished certain agencies and created new ones. As part of the consolidation, the administrative rules of the legacy agencies will transfer either to a new agency or to HHSC.

House Bill 2292 abolished the Texas Department on Aging (TDoA) and transferred certain of its powers, duties, functions, programs, and activities to the new Department of Aging and Disability Services (DADS). All TDoA administrative rules will be transferred from Title 40, Part 9 of the *Texas Administrative Code* to DADS and will be reorganized under Title 40, Part 1.

The transfer is effective September 1, 2004.

Please refer to Figure: 40 TAC Part 9 for the complete conversion chart.

Figure: 40 TAC Part 9

TRD-200405434

♦ ♦ ♦

Figure: 25 TAC Part 2

| Current Rules from Title 25, Part 2 Texas Department of Mental Health and Mental Retardation | | | | Transferred to Title 40, Part 1 Department of Aging and Disability Services | | | | Transferred to Title 25, Part 1 Department of State Health Services | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Chapter 401. System Administration** | | | | **Chapter 100. Miscellaneous** | | | | **Chapter 460. Miscellaneous** | | | |
| **Subch. & Division** | | **Section** | **Heading** | **Subch. & Division** | | **Heading** | **Section** | **Subch. & Division** | | **Heading** | **Section** |
| C | | | **TDMHMR Rulemaking** | G | | **TDMHMR Rulemaking** | | A | | **Texas Department of Mental Health and Mental Retardation** | |
| | | | | | | | | | 1 | **TDMHMR Rulemaking** | |
| | | §401.301 | Purpose | | | Purpose | §100.301 | | | Purpose | §460.1 |
| | | §401.302 | Definitions | | | Definitions | §100.302 | | | Definitions | §460.2 |
| | | §401.303 | Coordination of the Rulemaking Process | | | Coordination of the Rulemaking Process | §100.303 | | | Coordination of the Rulemaking Process | §460.3 |
| | | §401.304 | Petitions for Rules or Changes to Rules | | | Petitions for Rules or Changes to Rules | §100.304 | | | Petitions for Rules or Changes to Rules | §460.4 |
| | | §401.305 | Public Comment on Rules | | | Public Comment on Rules | §100.305 | | | Public Comment on Rules | §460.5 |
| | | §401.306 | Emergency Rulemaking | | | Emergency Rulemaking | §100.306 | | | Emergency Rulemaking | §460.6 |
| | | §401.307 | Distribution | | | Distribution | §100.307 | | | Distribution | §460.7 |
| | | §401.308 | References | | | References | §100.308 | | | References | §460.8 |

| Chapter 401. System Administration | | | | Chapter 2. Mental Retardation Authority Responsibilities | | | | Chapter 401. Mental Health System Administration | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Subch. & Division** | | **Section** | **Heading** | **Subch. & Division** | | **Heading** | **Section** | **Subch. & Division** | | **Heading** | **Section** |
| G | | | **Community Mental Health and Mental Retardation Centers** | A | | **Mental Retardation Authority Notification and Appeal** | | G | | **Local Mental Health Authority Notification and Appeal** | |
| | | §401.464 | Notification and Appeals Process | | | Notification and Appeals Process | §2.46 | | | Notification and Appeals Process | §401.464 |

| Chapter 404. Protection of Clients and Staff | | | | | | | | Chapter 404. Protection of Clients and Staff--Mental Health Services | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Subch. & Division** | | **Section** | **Heading** | | | | | **Subch. & Division** | | **Heading** | **Section** |
| E | | | **Rights of Persons Receiving Mental Health Services** | | | | | E | | **Rights of Persons Receiving Mental Health Services** | |
| | | §404.151 | Purpose | | | | | | | Purpose | §404.151 |
| | | §404.152 | Application | | | | | | | Application | §404.152 |
| | | §404.153 | Definitions | | | | | | | Definitions | §404.153 |
| | | §404.154 | Rights of All Persons Receiving Mental Health Services | | | | | | | Rights of All Persons Receiving Mental Health Services | §404.154 |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §404.155 | Rights of Persons Receiving Residential Mental Health Services | | | | | | | | Rights of Persons Receiving Residential Mental Health Services | §404.155 |
| | | §404.156 | Additional Rights of Persons Receiving Residential Mental Health Services at Department Facilities | | | | | | | | Additional Rights of Persons Receiving Residential Mental Health Services at Department Facilities | §404.156 |
| | | §404.157 | Rights of Persons Voluntarily Admitted to Inpatient Services | | | | | | | | Rights of Persons Voluntarily Admitted to Inpatient Services | §404.157 |
| | | §404.158 | Rights of Persons Apprehended for Emergency Detention for Inpatient Mental Health Services (Other Than for Chemical Dependency) | | | | | | | | Rights of Persons Apprehended for Emergency Detention for Inpatient Mental Health Services (Other Than for Chemical Dependency) | §404.158 |
| | | §404.159 | Rights of Persons Apprehended for Emergency Detention for Inpatient Chemical Dependency Services | | | | | | | | Rights of Persons Apprehended for Emergency Detention for Inpatient Chemical Dependency Services | §404.159 |
| | | §404.160 | Special Rights of Minors Receiving Inpatient Mental Health Services | | | | | | | | Special Rights of Minors Receiving Inpatient Mental Health Services | §404.160 |
| | | §404.161 | Rights Handbooks for Persons Receiving Mental Health Services at Department Facilities, Community Centers, and Psychiatric Hospitals Operated by Community Centers | | | | | | | | Rights Handbooks for Persons Receiving Mental Health Services at Department Facilities, Community Centers, and Psychiatric Hospitals Operated by Community Centers | §404.161 |
| | | §404.162 | Patient's Bill of Rights, Teen's Bill of Rights, and Children's Bill of Rights for Individuals Receiving Mental Health Services at Psychiatric Hospitals Not Operated by a Community Center | | | | | | | | Patient's Bill of Rights, Teen's Bill of Rights, and Children's Bill of Rights for Individuals Receiving Mental Health Services at Psychiatric Hospitals Not Operated by a Community Center | §404.162 |
| | | §404.163 | Communication of Rights to Individuals Receiving Mental Health Services | | | | | | | | Communication of Rights to Individuals Receiving Mental Health Services | §404.163 |
| | | §404.164 | Rights Protection Officer at Department Facilities and Community Centers | | | | | | | | Rights Protection Officer at Department Facilities and Community Centers | §404.164 |
| | | §404.165 | Staff Training in Rights of Persons Receiving Mental Health Services | | | | | | | | Staff Training in Rights of Persons Receiving Mental Health Services | §404.165 |
| | | §404.166 | Restriction of Rights as Part of Non-Emergency Behavioral Interventions | | | | | | | | Restriction of Rights as Part of Non-Emergency Behavioral Interventions | §404.166 |
| | | §404.167 | Restriction of Rights as Part of Emergency Behavioral Interventions: Restraint and Seclusion | | | | | | | | Restriction of Rights as Part of Emergency Behavioral Interventions: Restraint and Seclusion | §404.167 |
| | | §404.168 | References | | | | | | | | References | §404.168 |
| | | §404.169 | Distribution | | | | | | | | Distribution | §404.169 |

| Chapter 405. Client (Patient) Care | | | | Chapter 8. Client Care--Mental Retardation Services | | | | Chapter 405. Patient Care--Mental Health Services | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Subch. & Division | | Section | Heading | Subch. & Division | | Heading | Section | Subch. & Division | | Heading | Section |
| C | | | **Life-Sustaining Treatment** | C | | **Life-Sustaining Treatment** | | C | | **Life-Sustaining Treatment** | |
| | | §405.51 | Purpose | | | Purpose | §8.51 | | | Purpose | §405.51 |
| | | §405.52 | Application | | | Application | §8.52 | | | Application | §405.52 |
| | | §405.53 | Definitions | | | Definitions | §8.53 | | | Definitions | §405.53 |
| | | §405.54 | Resuscitative Status Policy | | | Resuscitative Status Policy | §8.54 | | | Resuscitative Status Policy | §405.54 |
| | | §405.55 | Determination and Implementation of Resuscitative Status Order | | | Determination and Implementation of Resuscitative Status Order | §8.55 | | | Determination and Implementation of Resuscitative Status Order | §405.55 |
| | | §405.56 | General Provisions Relating to Withholding or Withdrawal of Life-Sustaining Treatment under the Natural Death Act | | | General Provisions Relating to Withholding or Withdrawal of Life-Sustaining Treatment under the Natural Death Act | §8.56 | | | General Provisions Relating to Withholding or Withdrawal of Life-Sustaining Treatment under the Natural Death Act | §405.56 |
| | | §405.57 | Legal Expression through Directive under the Natural Death Act | | | Legal Expression through Directive under the Natural Death Act | §8.57 | | | Legal Expression through Directive under the Natural Death Act | §405.57 |
| | | §405.58 | Legal Expression through Directive under a Durable Power of Attorney for Health Care | | | Legal Expression through Directive under a Durable Power of Attorney for Health Care | §8.58 | | | Legal Expression through Directive under a Durable Power of Attorney for Health Care | §405.58 |
| | | §405.59 | Decision-making under the Natural Death Act and Durable Power of Attorney for Health Care for Individuals Who Have Issued Directives | | | Decision-making under the Natural Death Act and Durable Power of Attorney for Health Care for Individuals Who Have Issued Directives | §8.59 | | | Decision-making under the Natural Death Act and Durable Power of Attorney for Health Care for Individuals Who Have Issued Directives | §405.59 |
| | | §405.60 | Ethics Committee | | | Ethics Committee | §8.60 | | | Ethics Committee | §405.60 |
| | | §405.61 | Exhibits | | | Exhibits | §8.61 | | | Exhibits | §405.61 |
| | | §405.62 | References | | | References | §8.62 | | | References | §405.62 |
| | | §405.63 | Distribution | | | Distribution | §8.63 | | | Distribution | §405.63 |
| E | | | **Electroconvulsive Therapy (ECT)** | | | | | E | | **Electroconvulsive Therapy (ECT)** | |
| | | §405.101 | Purpose | | | | | | | Purpose | §405.101 |
| | | §405.102 | Application | | | | | | | Application | §405.102 |
| | | §405.103 | Definitions | | | | | | | Definitions | §405.103 |
| | | §405.104 | General Requirements | | | | | | | General Requirements | §405.104 |
| | | §405.105 | Indications and Contraindications for the Use of Electroconvulsive Therapy (ECT) | | | | | | | Indications and Contraindications for the Use of Electroconvulsive Therapy (ECT) | §405.105 |
| | | §405.106 | Medical Evaluation Required Prior to a Course of Electroconvulsive Therapy (ECT) | | | | | | | Medical Evaluation Required Prior to a Course of Electroconvulsive Therapy (ECT) | §405.106 |
| | | §405.107 | Consultation Required | | | | | | | Consultation Required | §405.107 |
| | | §405.108 | Informed Consent to ECT | | | | | | | Informed Consent to ECT | §405.108 |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §405.109 | Limitations on Use: Number per Year and Number per Series of Treatments | | | | | | | Limitations on Use: Number per Year and Number per Series of Treatments | §405.109 |
| | | §405.110 | Personnel and Equipment Procedures | | | | | | | Personnel and Equipment Procedures | §405.110 |
| | | §405.111 | Prohibition of Induction of Seizure by Chemical or Gaseous Agent | | | | | | | Prohibition of Induction of Seizure by Chemical or Gaseous Agent | §405.111 |
| | | §405.112 | Report of ECT | | | | | | | Report of ECT | §405.112 |
| | | §405.113 | ECT on Outpatient Basis | | | | | | | ECT on Outpatient Basis | §405.113 |
| | | §405.114 | Registration of ECT Stimulus Apparatus | | | | | | | Registration of ECT Stimulus Apparatus | §405.114 |
| | | §405.115 | Enforcement and Penalties | | | | | | | Enforcement and Penalties | §405.115 |
| | | §405.116 | Distribution | | | | | | | Distribution | §405.116 |
| | | §405.117 | Exhibits | | | | | | | Exhibits | §405.117 |
| I | | | **Consent to Treatment with Psychotropic Medication--Mental Retardation Facilities** | I | | **Consent to Treatment with Psychotropic Medication--Mental Retardation Facilities** | | | | | |
| | | §405.201 | Purpose | | | Purpose | §8.201 | | | | |
| | | §405.202 | Application | | | Application | §8.202 | | | | |
| | | §405.203 | Definitions | | | Definitions | §8.203 | | | | |
| | | §405.204 | General Information | | | General Information | §8.204 | | | | |
| | | §405.205 | Informed Consent: Persons Admitted under the Voluntary or Order of Protective Custody (OPC) Provisions of the PMRA | | | Informed Consent: Persons Admitted under the Voluntary or Order of Protective Custody (OPC) Provisions of the PMRA | §8.205 | | | | |
| | | §405.206 | Informed Consent: Persons Involuntarily Committed under the Provisions of the PMRA or Other Provisions (e.g., Code of Criminal Procedures, Family Code) | | | Informed Consent: Persons Involuntarily Committed under the Provisions of the PMRA or Other Provisions (e.g., Code of Criminal Procedures, Family Code) | §8.206 | | | | |
| | | §405.207 | Documentation of Informed Consent | | | Documentation of Informed Consent | §8.207 | | | | |
| | | §405.208 | Exhibits | | | Exhibits | §8.208 | | | | |
| | | §405.209 | Distribution | | | Distribution | §8.209 | | | | |
| J | | | **Surrogate Decision-Making for Community-based ICF/MR and ICF/MR/RC Facilities** | J | | **Surrogate Decision-Making for Community-based ICF/MR and ICF/MR/RC Facilities** | | | | | |
| | | §405.231 | Purpose | | | Purpose | §8.231 | | | | |
| | | §405.232 | Exclusions | | | Exclusions | §8.232 | | | | |
| | | §405.233 | Application | | | Application | §8.233 | | | | |
| | | §405.234 | Definitions | | | Definitions | §8.234 | | | | |
| | | §405.235 | Guiding Principles | | | Guiding Principles | §8.235 | | | | |
| | | §405.236 | Assessment of Capacity To Consent to Treatment | | | Assessment of Capacity To Consent to Treatment | §8.236 | | | | |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §405.237 | Appointment and Qualifications of a Surrogate Decision-Maker | | | Appointment and Qualifications of a Surrogate Decision-Maker | §8.237 | | | | |
| | | §405.238 | Surrogate Decision-Maker Rights and Responsibilities | | | Surrogate Decision-Maker Rights and Responsibilities | §8.238 | | | | |
| | | §405.239 | Interdisciplinary Team (IDT) Rights and Responsibilities as a Decision-Maker | | | Interdisciplinary Team (IDT) Rights and Responsibilities as a Decision-Maker | §8.239 | | | | |
| | | §405.240 | Appointment and Qualifications of a Surrogate Consent Committee | | | Appointment and Qualifications of a Surrogate Consent Committee | §8.240 | | | | |
| | | §405.241 | Surrogate Consent Committee Responsibilities and Operating Guidelines | | | Surrogate Consent Committee Responsibilities and Operating Guidelines | §8.241 | | | | |
| | | §405.242 | Review of an Application for a Treatment Decision | | | Review of an Application for a Treatment Decision | §8.242 | | | | |
| | | §405.243 | Consent Committee Coordination | | | Consent Committee Coordination | §8.243 | | | | |
| | | §405.244 | Pre-review of Application | | | Pre-review of Application | §8.244 | | | | |
| | | §405.245 | Notice of Application Review Meeting | | | Notice of Application Review Meeting | §8.245 | | | | |
| | | §405.246 | Surrogate Consent Committee Meeting Proceedings | | | Surrogate Consent Committee Meeting Proceedings | §8.246 | | | | |
| | | §405.247 | Notice of Determination | | | Notice of Determination | §8.247 | | | | |
| | | §405.248 | References | | | References | §8.248 | | | | |
| | | §405.249 | Distribution | | | Distribution | §8.249 | | | | |
| K | | | **Deaths of Persons Served by TXMHMR Facilities or Community Mental Health and Mental Retardation Centers** | K | | **Deaths of Persons Served by TXMHMR Facilities or Community Mental Health and Mental Retardation Centers** | | K | | **Deaths of Persons Served by TXMHMR Facilities or Community Mental Health and Mental Retardation Centers** | |
| | | §405.261 | Purpose | | | Purpose | §8.261 | | | Purpose | §405.261 |
| | | §405.262 | Application | | | Application | §8.262 | | | Application | §405.262 |
| | | §405.263 | Definitions | | | Definitions | §8.263 | | | Definitions | §405.263 |
| | | §405.264 | Facility Campus-Based Programs: Actions Taken upon the Death of Person Served | | | Facility Campus-Based Programs: Actions Taken upon the Death of Person Served | §8.264 | | | Facility Campus-Based Programs: Actions Taken upon the Death of Person Served | §405.264 |
| | | §405.265 | Facility Community-Based Services: Actions Taken upon the Death of Person Served | | | Facility Community-Based Services: Actions Taken upon the Death of Person Served | §8.265 | | | Facility Community-Based Services: Actions Taken upon the Death of Person Served | §405.265 |
| | | §405.266 | Community Centers: Actions Taken upon the Death of Person Served | | | Community Centers: Actions Taken upon the Death of Person Served | §8.266 | | | Community Centers: Actions Taken upon the Death of Person Served | §405.266 |
| | | §405.267 | Facility Campus-Based Programs: Statutory Requirements | | | Facility Campus-Based Programs: Statutory Requirements | §8.267 | | | Facility Campus-Based Programs: Statutory Requirements | §405.267 |
| | | §405.268 | Facility Community-Based Services and Community Centers: General Guidelines upon Death of a Person Served | | | Facility Community-Based Services and Community Centers: General Guidelines upon Death of a Person Served | §8.268 | | | Facility Community-Based Services and Community Centers: General Guidelines upon Death of a Person Served | §405.268 |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §405.269 | Facility Campus-Based Programs, Facility Community-Based Services and Community Centers: Administrative Death Review Determination | | | Facility Campus-Based Programs, Facility Community-Based Services and Community Centers: Administrative Death Review Determination | §8.269 | | | Facility Campus-Based Programs, Facility Community-Based Services and Community Centers: Administrative Death Review Determination | §405.269 |
| | | §405.270 | Facility Campus-Based Programs and Facility Community-Based Services: Clinical Death Review Committee | | | Facility Campus-Based Programs and Facility Community-Based Services: Clinical Death Review Committee | §8.270 | | | Facility Campus-Based Programs and Facility Community-Based Services: Clinical Death Review Committee | §405.270 |
| | | §405.271 | Facility Campus-Based Programs: Clinical Death Review Determination | | | Facility Campus-Based Programs: Clinical Death Review Determination | §8.271 | | | Facility Campus-Based Programs: Clinical Death Review Determination | §405.271 |
| | | §405.272 | Facility Community-Based Services and Community Centers: Clinical Death Review Determination | | | Facility Community-Based Services and Community Centers: Clinical Death Review Determination | §8.272 | | | Facility Community-Based Services and Community Centers: Clinical Death Review Determination | §405.272 |
| | | §405.273 | Facility Campus-Based Programs and Facility Community-Based Services: Clinical Death Review | | | Facility Campus-Based Programs and Facility Community-Based Services: Clinical Death Review | §8.273 | | | Facility Campus-Based Programs and Facility Community-Based Services: Clinical Death Review | §405.273 |
| | | §405.274 | Community Centers: Clinical Death Review | | | Community Centers: Clinical Death Review | §8.274 | | | Community Centers: Clinical Death Review | §405.274 |
| | | §405.275 | Facility Campus-Based Programs, Facility Community-Based Services, and Community Centers: Administrative Death Review | | | Facility Campus-Based Programs, Facility Community-Based Services, and Community Centers: Administrative Death Review | §8.275 | | | Facility Campus-Based Programs, Facility Community-Based Services, and Community Centers: Administrative Death Review | §405.275 |
| | | §405.276 | Reporting of Systemic Issues Emerging from Death Reviews | | | Reporting of Systemic Issues Emerging from Death Reviews | §8.276 | | | Reporting of Systemic Issues Emerging from Death Reviews | §405.276 |
| | | §405.277 | Distribution | | | Distribution | §8.277 | | | Distribution | §405.277 |
| | | §405.279 | References | | | References | §8.279 | | | References | §405.279 |
| L | | | **Human Immunodeficiency Virus (HIV) Prevention, Testing, and Treatment** | L | | **Human Immunodeficiency Virus (HIV) Prevention, Testing, and Treatment** | | L | | **Human Immunodeficiency Virus (HIV) Prevention, Testing, and Treatment** | |
| | | §405.281 | Purpose | | | Purpose | §8.281 | | | Purpose | §405.281 |
| | | §405.282 | Application | | | Application | §8.282 | | | Application | §405.282 |
| | | §405.283 | Definitions | | | Definitions | §8.283 | | | Definitions | §405.283 |
| | | §405.284 | Policy Overview | | | Policy Overview | §8.284 | | | Policy Overview | §405.284 |
| | | §405.285 | Education | | | Education | §8.285 | | | Education | §405.285 |
| | | §405.286 | Screening for HIV Antibody | | | Screening for HIV Antibody | §8.286 | | | Screening for HIV Antibody | §405.286 |
| | | §405.287 | Counseling | | | Counseling | §8.287 | | | Counseling | §405.287 |
| | | §405.288 | Confidentiality of Test Results | | | Confidentiality of Test Results | §8.288 | | | Confidentiality of Test Results | §405.288 |
| | | §405.289 | Documentation of Test Results | | | Documentation of Test Results | §8.289 | | | Documentation of Test Results | §405.289 |
| | | §405.290 | Required Reporting of Test Results | | | Required Reporting of Test Results | §8.290 | | | Required Reporting of Test Results | §405.290 |
| | | §405.291 | Management of Exposure to Blood/Body Substances | | | Management of Exposure to Blood/Body Substances | §8.291 | | | Management of Exposure to Blood/Body Substances | §405.291 |
| | | §405.292 | Limitation of Client Activity | | | Limitation of Client Activity | §8.292 | | | Limitation of Client Activity | §405.292 |
| | | §405.293 | Personnel Issues | | | Personnel Issues | §8.293 | | | Personnel Issues | §405.293 |
| | | §405.294 | Responsibility and Resources | | | Responsibility and Resources | §8.294 | | | Responsibility and Resources | §405.294 |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §405.295 | Exhibits | | | Exhibits | §8.295 | | | Exhibits | §405.295 |
| | | §405.296 | References | | | References | §8.296 | | | References | §405.296 |
| | | §405.297 | Distribution | | | Distribution | §8.297 | | | Distribution | §405.297 |
| Y | | | **Rights of Mentally Retarded Persons** | Y | | **Rights of Mentally Retarded Persons** | | | | | |
| | | §405.621 | Purpose | | | Purpose | §8.621 | | | | |
| | | §405.622 | Application | | | Application | §8.622 | | | | |
| | | §405.623 | Definitions | | | Definitions | §8.623 | | | | |
| | | §405.624 | Rights of All Clients Receiving Mental Retardation Services | | | Rights of All Clients Receiving Mental Retardation Services | §8.624 | | | | |
| | | §405.625 | Rights of Clients Receiving Residential Mental Retardation Services | | | Rights of Clients Receiving Residential Mental Retardation Services | §8.625 | | | | |
| | | §405.626 | Rights Handbook for Clients Receiving Mental Retardation Services | | | Rights Handbook for Clients Receiving Mental Retardation Services | §8.626 | | | | |
| | | §405.627 | Communication of Rights to Clients Receiving Mental Retardation Services | | | Communication of Rights to Clients Receiving Mental Retardation Services | §8.627 | | | | |
| | | §405.628 | References | | | References | §8.628 | | | | |
| | | §405.629 | Distribution | | | Distribution | §8.629 | | | | |

| Chapter 406. ICF/MR Programs | | | | Chapter 6. ICF/MR Programs--Contracting | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Subch. & Division | | Section | Heading | Subch. & Division | | Heading | Section | | | | |
| B | | | **Contracting Requirements** | B | | **Contracting Requirements** | | | | | |
| | | §406.64 | Causes for and Conditions of Debarment | | | Causes for and Conditions of Debarment | §6.64 | | | | |
| | | §406.65 | Causes for and Conditions of Suspension | | | Causes for and Conditions of Suspension | §6.65 | | | | |
| | | §406.66 | Proof Required for Debarment and Suspension | | | Proof Required for Debarment and Suspension | §6.66 | | | | |
| | | §406.67 | Notice Requirements for Debarment and for Suspension | | | Notice Requirements for Debarment and for Suspension | §6.67 | | | | |
| G | | | **Additional Facility Responsiblities** | G | | **Additional Facility Responsiblities** | | | | | |
| | | §406.301 | Agreements with Local School Districts | | | Agreements with Local School Districts | §6.301 | | | | |
| | | §406.310 | Consent to Treatment by Surrogate Decision-Makers | | | Consent to Treatment by Surrogate Decision-Makers | §6.310 | | | | |
| H | | | **Dental Program** | H | | **Dental Program** | | | | | |
| | | §406.351 | Program Basis | | | Program Basis | §6.351 | | | | |
| | | §406.352 | Eligibility | | | Eligibility | §6.352 | | | | |

| Chapter 406. ICF/MR Programs | | | | Chapter 100. Miscellaneous | | | |
|---|---|---|---|---|---|---|---|
| Subch. & Division | | Section | Heading | Subch. & Division | | Heading | Section |
| H | | | Dental Program | H | | Dental Program | |
| | | §406.353 | Confidentiality of Records | | | Confidentiality of Records | §100.353 |
| | | §406.354 | Freedom of Choice | | | Freedom of Choice | §100.354 |
| | | §406.355 | Allowable Services and Limitations | | | Allowable Services and Limitations | §100.355 |
| | | §406.356 | Dental Examination and Treatment | | | Dental Examination and Treatment | §100.356 |

| Chapter 406. ICF/MR Programs | | | | Chapter 6. ICF/MR Programs--Contracting | | | |
|---|---|---|---|---|---|---|---|
| Subch. & Division | | Section | Heading | Subch. & Division | | Heading | Section |
| H | | | Dental Program | H | | Dental Program | |
| | | §406.357 | Emergency Services | | | Emergency Services | §6.357 |

| Chapter 406. ICF/MR Programs | | | | Chapter 100. Miscellaneous | | | |
|---|---|---|---|---|---|---|---|
| Subch. & Division | | Section | Heading | Subch. & Division | | Heading | Section |
| H | | | Dental Program | H | | Dental Program | |
| | | §406.358 | Preventive Services | | | Preventive Services | §100.358 |
| | | §406.359 | Therapeutic Services | | | Therapeutic Services | §100.359 |
| | | §406.360 | Orthodontic Services | | | Orthodontic Services | §100.360 |
| | | §406.361 | Eligibility for Orthodontic Services | | | Eligibility for Orthodontic Services | §100.361 |
| | | §406.362 | Application for Participation | | | Application for Participation | §100.362 |
| | | §406.363 | Requirements for Participation | | | Requirements for Participation | §100.363 |
| | | §406.364 | Orthodontic Provider Participation | | | Orthodontic Provider Participation | §100.364 |
| | | §406.365 | Post-payment Review | | | Post-payment Review | §100.365 |
| | | §406.366 | Termination of a Provider Agreement | | | Termination of a Provider Agreement | §100.366 |
| | | §406.367 | Maximum Payment | | | Maximum Payment | §100.367 |
| | | §406.368 | Charges to ICF/MR | | | Charges to ICF/MR | §100.368 |
| | | §406.369 | Payment of Claims | | | Payment of Claims | §100.369 |

| Chapter 406. ICF/MR Programs | | | | Chapter 6. ICF/MR Programs--Contracting | | | |
|---|---|---|---|---|---|---|---|
| Subch. & Division | | Section | Heading | Subch. & Division | | Heading | Section |
| H | | | Dental Program | H | | Dental Program | |
| | | §406.370 | Change to Another Provider | | | Change to Another Provider | §6.370 |

| Chapter 406. ICF/MR Programs | | | | Chapter 100. Miscellaneous | | | |
|---|---|---|---|---|---|---|---|
| Subch. & Division | | Section | Heading | Subch. & Division | | Heading | Section |
| H | | | Dental Program | H | | Dental Program | |
| | | §406.371 | Time Limits, Return, and Denial of Claims | | | Time Limits, Return, and Denial of Claims | §100.371 |
| | | §406.372 | Dental Problems Discovered by the Utilization-review Dentist | | | Dental Problems Discovered by the Utilization-review Dentist | §100.372 |
| | | §406.373 | Utilization of Peer Review or Grievance Committees | | | Utilization of Peer Review or Grievance Committees | §100.373 |
| | | §406.374 | Utilization of Texas State Board of Dental Examiners | | | Utilization of Texas State Board of Dental Examiners | §100.374 |
| | | §406.375 | Types of Reviews | | | Types of Reviews | §100.375 |
| | | §406.376 | Notification to Provider about Utilization Review | | | Notification to Provider about Utilization Review | §100.376 |
| | | §406.377 | Provider Cooperation | | | Provider Cooperation | §100.377 |
| | | §406.378 | Report of Findings | | | Report of Findings | §100.378 |
| | | §406.379 | Classification of Review Findings | | | Classification of Review Findings | §100.379 |
| | | §406.380 | Restitution of Overpayments | | | Restitution of Overpayments | §100.380 |
| | | §406.381 | Administrative Actions | | | Administrative Actions | §100.381 |

| Chapter 409. Medicaid Programs | | | | Chapter 9. Mental Retardation Services--Medicaid State Operating Agency Responsibilities | | | | Chapter 409. Mental Health Services--Medicaid Programs | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Subch. & Division | | Section | Heading | Subch. & Division | | Heading | Section | Subch. & Division | | Heading | Section |
| B | | | Adverse Actions | B | | Adverse Actions | | B | | Adverse Actions | |
| | | §409.31 | Application | | | Application | §9.31 | | | Application | §409.31 |
| | | §409.32 | Definitions | | | Definitions | §9.32 | | | Definitions | §409.32 |
| | | §409.33 | Notice of Adverse Action | | | Notice of Adverse Action | §9.33 | | | Notice of Adverse Action | §409.33 |
| | | §409.34 | Request for an Administrative Hearing | | | Request for an Administrative Hearing | §9.34 | | | Request for an Administrative Hearing | §409.34 |
| | | §409.35 | Withholding Provider Agreement Payments | | | Withholding Provider Agreement Payments | §9.35 | | | Withholding Provider Agreement Payments | §409.35 |

| Chapter 409. Medicaid Programs | | | | Chapter 100. Miscellaneous | | | | Chapter 460. Miscellaneous | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Subch. & Division | | Section | Heading | Subch. & Division | | Heading | Section | Subch. & Division | | Heading | Section |
| C | | | **Fraud and Abuse and Recovery of Benefits** | C | | **Fraud and Abuse and Recovery of Benefits** | | A | | **Texas Department of Mental Health and Mental Retardation** | |
| | | | | | | | | | 2 | **Fraud and Abuse and Recovery of Benefits** | |
| | | §409.51 | Department Responsibility for Minimizing Fraud and Abuse | | | Department Responsibility for Minimizing Fraud and Abuse | §100.151 | | | Department Responsibility for Minimizing Fraud and Abuse | §460.11 |
| | | §409.52 | Confidentiality of Fraud or Abuse Investigation Records | | | Confidentiality of Fraud or Abuse Investigation Records | §100.152 | | | Confidentiality of Fraud or Abuse Investigation Records | §460.12 |
| | | §409.53 | Statutory Bases | | | Statutory Bases | §100.153 | | | Statutory Bases | §460.13 |
| | | §409.54 | Department Responsibilities in Relation to Provider Fraud and Abuse | | | Department Responsibilities in Relation to Provider Fraud and Abuse | §100.154 | | | Department Responsibilities in Relation to Provider Fraud and Abuse | §460.14 |
| | | §409.55 | Grounds for Fraud Referral and Administrative Sanction | | | Grounds for Fraud Referral and Administrative Sanction | §100.155 | | | Grounds for Fraud Referral and Administrative Sanction | §460.15 |
| | | §409.56 | Administrative Sanctions/Actions, Restitution, and Recoupment | | | Administrative Sanctions/Actions, Restitution, and Recoupment | §100.156 | | | Administrative Sanctions/Actions, Restitution, and Recoupment | §460.16 |
| | | §409.57 | Definitions | | | Definitions | §100.157 | | | Definitions | §460.17 |
| | | §409.58 | Administrative Sanctions and Actions | | | Administrative Sanctions and Actions | §100.158 | | | Administrative Sanctions and Actions | §460.18 |
| | | §409.59 | Scope of Sanction | | | Scope of Sanction | §100.159 | | | Scope of Sanction | §460.19 |
| | | §409.60 | Imposing a Sanction | | | Imposing a Sanction | §100.160 | | | Imposing a Sanction | §460.20 |
| | | §409.61 | Notice of Adverse Action | | | Notice of Adverse Action | §100.161 | | | Notice of Adverse Action | §460.21 |
| | | §409.62 | Informing Other Interested Parties | | | Informing Other Interested Parties | §100.162 | | | Informing Other Interested Parties | §460.22 |
| | | §409.63 | Provider Education | | | Provider Education | §100.163 | | | Provider Education | §460.23 |
| | | §409.64 | Request for Reinstatement | | | Request for Reinstatement | §100.164 | | | Request for Reinstatement | §460.24 |
| | | §409.65 | Obligation of Health Care Practitioners and Providers | | | Obligation of Health Care Practitioners and Providers | §100.165 | | | Obligation of Health Care Practitioners and Providers | §460.25 |
| | | §409.66 | Department Responsibility for Recovery of Funds | | | Department Responsibility for Recovery of Funds | §100.166 | | | Department Responsibility for Recovery of Funds | §460.26 |
| | | §409.67 | Recovery from Providers | | | Recovery from Providers | §100.167 | | | Recovery from Providers | §460.27 |
| | | §409.68 | Recovery When Fraud Is Involved | | | Recovery When Fraud Is Involved | §100.168 | | | Recovery When Fraud Is Involved | §460.28 |
| | | §409.69 | Provider Re-enrollment or Provider Contract or Agreement Modification | | | Provider Re-enrollment or Provider Contract or Agreement Modification | §100.169 | | | Provider Re-enrollment or Provider Contract or Agreement Modification | §460.29 |

| Chapter 411. State Authority Responsibilties | | | | Chapter 1. State Mental Retardation Authority Responsibilties | | | | Chapter 411. State Mental Health Authority Responsibilties | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Subch. & Division | | Section | Heading | Subch. & Division | | Heading | Section | Subch. & Division | | Heading | Section |
| A | | | Advisory Committees | A | | Advisory Committees | | A | | Advisory Committees | |
| | | §411.1 | Purpose | | | Purpose | §1.1 | | | Purpose | §411.1 |
| | | §411.2 | Application | | | Application | §1.2 | | | Application | §411.2 |
| | | §411.3 | Definitions | | | Definitions | §1.3 | | | Definitions | §411.3 |
| | | §411.4 | Advisory Committee Requirements | | | Advisory Committee Requirements | §1.4 | | | Advisory Committee Requirements | §411.4 |
| | | §411.7 | Mental Health Planning and Advisory Council | | | | | | | Mental Health Planning and Advisory Council | §411.7 |
| | | §411.8 | Mental Retardation Planning and Advisory Council | | | Mental Retardation Planning and Advisory Council | §1.8 | | | | |
| | | §411.12 | Inpatient Mental Health Services Advisory Committee | | | | | | | Inpatient Mental Health Services Advisory Committee | §411.12 |
| | | §411.20 | References | | | References | §1.20 | | | References | §411.20 |
| | | §411.21 | Distribution | | | Distribution | §1.21 | | | Distribution | §411.21 |

| Chapter 411. State Authority Responsibilties | | | | Chapter 100. Miscellaneous | | | | Chapter 460. Miscellaneous | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Subch. & Division | | Section | Heading | Subch. & Division | | Heading | Section | Subch. & Division | | Heading | Section |
| B | | | Interagency Agreements | B | | Interagency Agreements | | A | | Texas Department of Mental Health and Mental Retardation | |
| | | | | | | | | | 3 | Interagency Agreements | |
| | | §411.51 | Purpose | | | Purpose | §100.51 | | | Purpose | §460.31 |
| | | §411.52 | Application | | | Application | §100.52 | | | Application | §460.32 |
| | | §411.53 | Definitions | | | Definitions | §100.53 | | | Definitions | §460.33 |
| | | §411.54 | Memorandum of Understanding: Provision, Regulation, and Funding of Services in Hospitals and Long-Term Care Facilities | | | Memorandum of Understanding: Provision, Regulation, and Funding of Services in Hospitals and Long-Term Care Facilities | §100.54 | | | Memorandum of Understanding: Provision, Regulation, and Funding of Services in Hospitals and Long-Term Care Facilities | §460.34 |
| | | §411.55 | Memorandum of Understanding: Coordination of Services to Disabled Persons | | | Memorandum of Understanding: Coordination of Services to Disabled Persons | §100.55 | | | Memorandum of Understanding: Coordination of Services to Disabled Persons | §460.35 |
| | | §411.57 | Memorandum of Understanding: Coordination of Delivery of Mental Health and Mental Retardation Services to Hearing-Impaired or Deaf Persons | | | Memorandum of Understanding: Coordination of Delivery of Mental Health and Mental Retardation Services to Hearing-Impaired or Deaf Persons | §100.57 | | | Memorandum of Understanding: Coordination of Delivery of Mental Health and Mental Retardation Services to Hearing-Impaired or Deaf Persons | §460.37 |
| | | §411.58 | Memorandum of Understanding: Coordination of Exchange and Distribution of Public Awareness Information | | | Memorandum of Understanding: Coordination of Exchange and Distribution of Public Awareness Information | §100.58 | | | Memorandum of Understanding: Coordination of Exchange and Distribution of Public Awareness Information | §460.38 |

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §411.60 | Training Requirements for Identifying Abuse, Neglect, and Unprofessional or Unethical Conduct in Health Care Facilities | | | | | | | | Training Requirements for Identifying Abuse, Neglect, and Unprofessional or Unethical Conduct in Health Care Facilities | §460.40 |

| Chapter 411. State Authority Responsibilties | | | | Chapter 72. Memorandum of Understanding with Other State Agencies | | | | Chapter 411. State Mental Health Authority Responsibilties | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Subch. & Division | | Section | Heading | Subch. & Division | | Heading | Section | Subch. & Division | | Heading | Section |
| **B** | | | **Interagency Agreements** | **L** | | **MOU--Capacity Assessment for Self Care and Financial Management** | | **B** | | **Interagency Agreements** | |
| | | §411.61 | Memorandum of Understanding Concerning Capacity Assessment for Self Care and Financial Management | | | Memorandum of Understanding Concerning Capacity Assessment for Self Care and Financial Management | §72.5001 | | | Memorandum of Understanding Concerning Capacity Assessment for Self Care and Financial Management | §411.61 |
| | | | | **M** | | **MOU--Continuity of Care System for Offenders with Mental Impairments** | | | | | |
| | | §411.62 | Memorandum of Understanding concerning Continuity of Care System for Offenders with Mental Impairments | | | Memorandum of Understanding concerning Continuity of Care System for Offenders with Mental Impairments | §72.5002 | | | Memorandum of Understanding concerning Continuity of Care System for Offenders with Mental Impairments | §411.62 |
| | | | | **N** | | **MOU--Coordination of Special Education Services to Students with Disabilities in Residential Facilities** | | | | | |
| | | §411.63 | Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities | | | Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities | §72.5003 | | | Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities | §411.63 |

| Chapter 411. State Authority Responsibilties | | | | Chapter 100. Miscellaneous | | | | Chapter 411. State Mental Health Authority Responsibilties | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Subch. & Division | | Section | Heading | Subch. & Division | | Heading | Section | Subch. & Division | | Heading | Section |
| **B** | | | **Interagency Agreements** | **B** | | **Interagency Agreements** | | **B** | | **Interagency Agreements** | |
| | | §411.64 | Memorandum of Understanding (MOU) on Relocation Pilot Program | | | Memorandum of Understanding (MOU) on Relocation Pilot Program | §100.64 | | | Memorandum of Understanding (MOU) on Relocation Pilot Program | §411.64 |

| Chapter 411. State Authority Responsibilties | | | | Chapter 100. Miscellaneous | | | | Chapter 460. Miscellaneous | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Subch. & Division | | Section | Heading | Subch. & Division | | Heading | Section | Subch. & Division | | Heading | Section |
| B | | | Interagency Agreements | B | | Interagency Agreements | | A | | Texas Department of Mental Health and Mental Retardation | |
| | | | | | | | | | 3 | Interagency Agreements | |
| | | §411.75 | Distribution | | | Distribution | §100.75 | | | Distribution | §460.45 |

| Chapter 411. State Authority Responsibilties | | | | Chapter 1. State Mental Retardation Authority Responsibilties | | | | Chapter 411. State Mental Health Authority Responsibilties | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Subch. & Division | | Section | Heading | Subch. & Division | | Heading | Section | Subch. & Division | | Heading | Section |
| D | | | Administrative Hearings of the Department in Contested Cases | D | | Administrative Hearings of the Department in Contested Cases | | D | | Administrative Hearings of the Department in Contested Cases | |
| | | §411.151 | Purpose | | | Purpose | §1.151 | | | Purpose | §411.151 |
| | | §411.152 | Applicability and Scope of Rules | | | Applicability and Scope of Rules | §1.152 | | | Applicability and Scope of Rules | §411.152 |
| | | §411.153 | Definitions | | | Definitions | §1.153 | | | Definitions | §411.153 |
| | | §411.154 | Administrative Law Judge | | | Administrative Law Judge | §1.154 | | | Administrative Law Judge | §411.154 |
| | | §411.155 | Hearing Guidelines | | | Hearing Guidelines | §1.155 | | | Hearing Guidelines | §411.155 |
| | | §411.156 | Conduct of Hearings--General Requirements | | | Conduct of Hearings--General Requirements | §1.156 | | | Conduct of Hearings--General Requirements | §411.156 |
| | | §411.157 | Prehearing Procedure | | | Prehearing Procedure | §1.157 | | | Prehearing Procedure | §411.157 |
| | | §411.158 | Evidence and Depositions | | | Evidence and Depositions | §1.158 | | | Evidence and Depositions | §411.158 |
| | | §411.159 | Deliberation | | | Deliberation | §1.159 | | | Deliberation | §411.159 |
| | | §411.160 | Decisions | | | Decisions | §1.160 | | | Decisions | §411.160 |
| | | §411.162 | References | | | References | §1.162 | | | References | §411.162 |
| | | §411.163 | Distribution | | | Distribution | §1.163 | | | Distribution | §411.163 |

| Chapter 411. State Authority Responsibilties | | | | Chapter 100. Miscellaneous | | | | Chapter 460. Miscellaneous | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Subch. & Division | | Section | Heading | Subch. & Division | | Heading | Section | Subch. & Division | | Heading | Section |
| F | | | Internal Audits and Investigations | F | | Internal Audits and Investigations | | A | | Texas Department of Mental Health and Mental Retardation | |
| | | | | | | | | | 4 | Internal Audits and Investigations | |
| | | §411.251 | Purpose | | | Purpose | §100.251 | | | Purpose | §460.51 |
| | | §411.252 | Application | | | Application | §100.252 | | | Application | §460.52 |
| | | §411.253 | Definitions | | | Definitions | §100.253 | | | Definitions | §460.53 |
| | | §411.254 | Office of Internal Audit Authority and Function | | | Office of Internal Audit Authority and Function | §100.254 | | | Office of Internal Audit Authority and Function | §460.54 |
| | | §411.255 | Responsibilities of the Audit Committee Chairman and the TDMHMR Board | | | Responsibilities of the Audit Committee Chairman and the TDMHMR Board | §100.255 | | | Responsibilities of the Audit Committee Chairman and the TDMHMR Board | §460.55 |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §411.256 | Responsibilities of the Director | | | Responsibilities of the Director | §100.256 | | | Responsibilities of the Director | §460.56 |
| | | §411.257 | Access to Records | | | Access to Records | §100.257 | | | Access to Records | §460.57 |
| | | §411.258 | Standards of Conduct | | | Standards of Conduct | §100.258 | | | Standards of Conduct | §460.58 |
| | | §411.259 | Standards for Conducting Audits and Investigations | | | Standards for Conducting Audits and Investigations | §100.259 | | | Standards for Conducting Audits and Investigations | §460.59 |
| | | §411.260 | Scope of Audit Work | | | Scope of Audit Work | §100.260 | | | Scope of Audit Work | §460.60 |
| | | §411.261 | Exit Conference Procedures for Audits | | | Exit Conference Procedures for Audits | §100.261 | | | Exit Conference Procedures for Audits | §460.61 |
| | | §411.262 | Responses to Audit Findings | | | Responses to Audit Findings | §100.262 | | | Responses to Audit Findings | §460.62 |
| | | §411.263 | Final Audit Report Distribution | | | Final Audit Report Distribution | §100.263 | | | Final Audit Report Distribution | §460.63 |
| | | §411.264 | Implementing Audit Recommendations | | | Implementing Audit Recommendations | §100.264 | | | Implementing Audit Recommendations | §460.64 |
| | | §411.265 | Investigating Alleged Fraud, Misconduct, or Other Wrongdoing | | | Investigating Alleged Fraud, Misconduct, or Other Wrongdoing | §100.265 | | | Investigating Alleged Fraud, Misconduct, or Other Wrongdoing | §460.65 |
| | | §411.266 | References | | | References | §100.266 | | | References | §460.66 |
| | | §411.267 | Distribution | | | Distribution | §100.267 | | | Distribution | §460.67 |

| Chapter 411. State Authority Responsibilties | | | | Chapter 1. State Mental Retardation Authority Responsibilties | | | | Chapter 411. State Mental Health Authority Responsibilties | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Subch. & Division | | Section | Heading | Subch. & Division | | Heading | Section | Subch. & Division | | Heading | Section |
| G | | | **Community MHMR Centers** | G | | **Community MHMR Centers** | | G | | **Community MHMR Centers** | |
| | | §411.301 | Purpose | | | Purpose | §1.301 | | | Purpose | §411.301 |
| | | §411.302 | Application | | | Application | §1.302 | | | Application | §411.302 |
| | | §411.303 | Definitions | | | Definitions | §1.303 | | | Definitions | §411.303 |
| | | §411.304 | Philosophy | | | Philosophy | §1.304 | | | Philosophy | §411.304 |
| | | §411.305 | Process to Establish a New Community Center | | | Process to Establish a New Community Center | §1.305 | | | Process to Establish a New Community Center | §411.305 |
| | | §411.306 | Updating a Community Center's Current Plan | | | Updating a Community Center's Current Plan | §1.306 | | | Updating a Community Center's Current Plan | §411.306 |
| | | §411.307 | Modifying a Community Center's Current Plan | | | Modifying a Community Center's Current Plan | §1.307 | | | Modifying a Community Center's Current Plan | §411.307 |
| | | §411.308 | Dissolution or Merger of Community Centers | | | Dissolution or Merger of Community Centers | §1.308 | | | Dissolution or Merger of Community Centers | §411.308 |
| | | §411.309 | Appointment of Manager or Management Team | | | Appointment of Manager or Management Team | §1.309 | | | Appointment of Manager or Management Team | §411.309 |
| | | §411.310 | Standards of Administration for Boards of Trustees | | | Standards of Administration for Boards of Trustees | §1.310 | | | Standards of Administration for Boards of Trustees | §411.310 |
| | | §411.311 | Civil Rights | | | Civil Rights | §1.311 | | | Civil Rights | §411.311 |
| | | §411.312 | Fiscal Controls | | | Fiscal Controls | §1.312 | | | Fiscal Controls | §411.312 |
| | | §411.313 | Determination of Salaries of Community Center Employees | | | Determination of Salaries of Community Center Employees | §1.313 | | | Determination of Salaries of Community Center Employees | §411.313 |
| | | §411.314 | Exhibits | | | Exhibits | §1.314 | | | Exhibits | §411.314 |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §411.315 | References | | | References | §1.315 | | | References | §411.315 |
| | | §411.316 | Distribution | | | Distribution | §1.316 | | | Distribution | §411.316 |
| I | | | **TDMHMR In-Home and Family Support Program** | I | | **TDMHMR In-Home and Family Support Program** | | I | | **TDMHMR In-Home and Family Support Program** | |
| | | §411.401 | Purpose | | | Purpose | §1.401 | | | Purpose | §411.401 |
| | | §411.402 | Application | | | Application | §1.402 | | | Application | §411.402 |
| | | §411.403 | Definitions | | | Definitions | §1.403 | | | Definitions | §411.403 |
| | | §411.404 | TDMHMR In-Home and Family Support Program--Criteria, Purpose, and Limitations | | | TDMHMR In-Home and Family Support Program--Criteria, Purpose, and Limitations | §1.404 | | | TDMHMR In-Home and Family Support Program--Criteria, Purpose, and Limitations | §411.404 |
| | | §411.405 | Allowable Costs | | | Allowable Costs | §1.405 | | | Allowable Costs | §411.405 |
| | | §411.406 | Unallowable Costs | | | Unallowable Costs | §1.406 | | | Unallowable Costs | §411.406 |
| | | §411.407 | Eligibility Determination | | | Eligibility Determination | §1.407 | | | Eligibility Determination | §411.407 |
| | | §411.408 | Applying for Assistance and Processing Applications | | | Applying for Assistance and Processing Applications | §1.408 | | | Applying for Assistance and Processing Applications | §411.408 |
| | | §411.409 | Written Plan and Disbursing Assistance | | | Written Plan and Disbursing Assistance | §1.409 | | | Written Plan and Disbursing Assistance | §411.409 |
| | | §411.410 | Administrative Implementation | | | Administrative Implementation | §1.410 | | | Administrative Implementation | §411.410 |
| | | §411.411 | Appeal | | | Appeal | §1.411 | | | Appeal | §411.411 |
| | | §411.412 | Exhibits | | | Exhibits | §1.412 | | | Exhibits | §411.412 |
| | | §411.413 | References | | | References | §1.413 | | | References | §411.413 |
| | | §411.414 | Distribution | | | Distribution | §1.414 | | | Distribution | §411.414 |
| J | | | **Standards of Care and Treatment in Psychiatric Hospitals** | | | | | J | | **Standards of Care and Treatment in Psychiatric Hospitals** | |
| | 1 | | **General Requirements** | | | | | | 1 | **General Requirements** | |
| | | §411.451 | Purpose | | | | | | | Purpose | §411.451 |
| | | §411.452 | Application | | | | | | | Application | §411.452 |
| | | §411.453 | Definitions | | | | | | | Definitions | §411.453 |
| | | §411.454 | General Provisions | | | | | | | General Provisions | §411.454 |
| | | §411.455 | Individuals with a Sole Diagnosis of a Substance Use Disorder | | | | | | | Individuals with a Sole Diagnosis of a Substance Use Disorder | §411.455 |
| | 2 | | **Admission** | | | | | | 2 | **Admission** | |
| | | §411.459 | Admission Criteria | | | | | | | Admission Criteria | §411.459 |
| | | §411.461 | Voluntary Admission | | | | | | | Voluntary Admission | §411.461 |
| | | §411.462 | Emergency Detention | | | | | | | Emergency Detention | §411.462 |
| | | §411.463 | Admission of an Individual under Protective Custody Order, for Court-ordered Inpatient Mental Health Services, or Under Order for Commitment or Order for Placement | | | | | | | Admission of an Individual under Protective Custody Order, for Court-ordered Inpatient Mental Health Services, or Under Order for Commitment or Order for Placement | §411.463 |
| | | §411.464 | Monitoring Upon Admission | | | | | | | Monitoring Upon Admission | §411.464 |
| | | §411.465 | Voluntary Treatment Following Involuntary Admission | | | | | | | Voluntary Treatment Following Involuntary Admission | §411.465 |

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 3 | | **Emergency Treatment** | | | | | | | 3 | **Emergency Treatment** | |
| | | §411.468 | Responding to an Emergency Medical Condition of a Patient, Prospective Patient, or Individual Who Arrives on Hospital Property Requesting Examination or Treatment | | | | | | | | Responding to an Emergency Medical Condition of a Patient, Prospective Patient, or Individual Who Arrives on Hospital Property Requesting Examination or Treatment | §411.468 |
| | 4 | | **Service Requirements** | | | | | | | 4 | **Service Requirements** | |
| | | §411.471 | Inpatient Mental Health Treatment and Treatment Planning | | | | | | | | Inpatient Mental Health Treatment and Treatment Planning | §411.471 |
| | | §411.472 | Medical Services | | | | | | | | Medical Services | §411.472 |
| | | §411.473 | Nursing Services | | | | | | | | Nursing Services | §411.473 |
| | | §411.474 | Social Services | | | | | | | | Social Services | §411.474 |
| | | §411.475 | Therapeutic Activities | | | | | | | | Therapeutic Activities | §411.475 |
| | | §411.476 | Psychological Services | | | | | | | | Psychological Services | §411.476 |
| | | §411.477 | Protection of a Patient | | | | | | | | Protection of a Patient | §411.477 |
| | 5 | | **Discharge** | | | | | | | 5 | **Discharge** | |
| | | §411.482 | Discharge Planning | | | | | | | | Discharge Planning | §411.482 |
| | | §411.483 | Discharge Notices and Release of Minors | | | | | | | | Discharge Notices and Release of Minors | §411.483 |
| | | §411.484 | Discharge of a Voluntary Patient Requesting Discharge | | | | | | | | Discharge of a Voluntary Patient Requesting Discharge | §411.484 |
| | | §411.485 | Discharge of an Involuntary Patient | | | | | | | | Discharge of an Involuntary Patient | §411.485 |
| | 6 | | **Documentation** | | | | | | | 6 | **Documentation** | |
| | | §411.488 | Content of Medical Record | | | | | | | | Content of Medical Record | §411.488 |
| | 7 | | **Staff Development** | | | | | | | 7 | **Staff Development** | |
| | | §411.490 | Staff Member Training | | | | | | | | Staff Member Training | §411.490 |
| | 8 | | **Performance Improvement** | | | | | | | 8 | **Performance Improvement** | |
| | | §411.493 | Quality Assessment and Performance Improvement Program | | | | | | | | Quality Assessment and Performance Improvement Program | §411.493 |
| | | §411.494 | Reporting and Investigating Sentinel Events | | | | | | | | Reporting and Investigating Sentinel Events | §411.494 |
| | | §411.495 | Response to External Reviews | | | | | | | | Response to External Reviews | §411.495 |
| | | §411.496 | Advisory Committee for Nurse Staffing | | | | | | | | Advisory Committee for Nurse Staffing | §411.496 |
| | 9 | | **References and Distribution** | | | | | | | 9 | **References and Distribution** | |
| | | §411.499 | References | | | | | | | | References | §411.499 |
| | | §411.500 | Distribution | | | | | | | | Distribution | §411.500 |
| M | | | **Standards of Care and Treatment in Crisis Stabilization Units** | | | | | | M | | **Standards of Care and Treatment in Crisis Stabilization Units** | |
| | 1 | | **General Requirements** | | | | | | | 1 | **General Requirements** | |
| | | §411.601 | Purpose | | | | | | | | Purpose | §411.601 |
| | | §411.602 | Application | | | | | | | | Application | §411.602 |

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §411.603 | Definitions | | | | | | | | Definitions | §411.603 |
| | | §411.604 | General Provisions | | | | | | | | General Provisions | §411.604 |
| | 2 | | **Admission** | | | | | | | 2 | **Admission** | |
| | | §411.608 | Admission Criteria | | | | | | | | Admission Criteria | §411.608 |
| | | §411.609 | Voluntary Admission | | | | | | | | Voluntary Admission | §411.609 |
| | | §411.610 | Emergency Detention | | | | | | | | Emergency Detention | §411.610 |
| | | §411.611 | Admission Under Protective Custody Order | | | | | | | | Admission Under Protective Custody Order | §411.611 |
| | | §411.612 | Monitoring Upon Admission | | | | | | | | Monitoring Upon Admission | §411.612 |
| | | §411.613 | Voluntary Treatment Following Involuntary Admission | | | | | | | | Voluntary Treatment Following Involuntary Admission | §411.613 |
| | 3 | | **Emergency Treatment** | | | | | | | 3 | **Emergency Treatment** | |
| | | §411.617 | Responding to an Emergency Medical Condition of a Prospective Patient or a Patient | | | | | | | | Responding to an Emergency Medical Condition of a Prospective Patient or a Patient | §411.617 |
| | 4 | | **Service Requirements** | | | | | | | 4 | **Service Requirements** | |
| | | §411.621 | Crisis Stabilization Services and Treatment Planning | | | | | | | | Crisis Stabilization Services and Treatment Planning | §411.621 |
| | | §411.622 | Medical Services | | | | | | | | Medical Services | §411.622 |
| | | §411.623 | Nursing Services | | | | | | | | Nursing Services | §411.623 |
| | | §411.624 | Protection of a Patient | | | | | | | | Protection of a Patient | §411.624 |
| | 5 | | **Discharge** | | | | | | | 5 | **Discharge** | |
| | | §411.628 | Discharge Planning | | | | | | | | Discharge Planning | §411.628 |
| | | §411.629 | Discharge Notices | | | | | | | | Discharge Notices | §411.629 |
| | | §411.630 | Transfer Because of Dangerous Behavior, Restraint or Seclusion, Commitment Orders, or Medical Condition | | | | | | | | Transfer Because of Dangerous Behavior, Restraint or Seclusion, Commitment Orders, or Medical Condition | §411.630 |
| | | §411.631 | Discharge of a Voluntary Patient | | | | | | | | Discharge of a Voluntary Patient | §411.631 |
| | | §411.632 | Maximum Length of Stay for a Voluntary Patient | | | | | | | | Maximum Length of Stay for a Voluntary Patient | §411.632 |
| | | §411.633 | Discharge of an Involuntary Patient | | | | | | | | Discharge of an Involuntary Patient | §411.633 |
| | 6 | | **Documentation** | | | | | | | 6 | **Documentation** | |
| | | §411.637 | Content of Medical Record | | | | | | | | Content of Medical Record | §411.637 |
| | 7 | | **Staff Development** | | | | | | | 7 | **Staff Development** | |
| | | §411.641 | Staff Member Training | | | | | | | | Staff Member Training | §411.641 |
| | 8 | | **Sentinel Events and External Reviews** | | | | | | | 8 | **Sentinel Events and External Reviews** | |
| | | §411.645 | Reporting and Investigating Sentinel Events | | | | | | | | Reporting and Investigating Sentinel Events | §411.645 |
| | | §411.646 | Response to External Reviews | | | | | | | | Response to External Reviews | §411.646 |
| | 9 | | **References and Distribution** | | | | | | | 9 | **References and Distribution** | |
| | | §411.649 | References | | | | | | | | References | §411.649 |

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §411.650 | Distribution | | | | | | | | | Distribution | §411.650 |
| **N** | | | **Standards for Services to Individuals with Co-occurring Psychiatric and Substance Use Disorders (COPSD)** | | | | | | | **N** | | **Standards for Services to Individuals with Co-occurring Psychiatric and Substance Use Disorders (COPSD)** | |
| | **1** | | **General Provisions** | | | | | | | | **1** | **General Provisions** | |
| | | §411.651 | Purpose | | | | | | | | | Purpose | §411.651 |
| | | §411.652 | Application | | | | | | | | | Application | §411.652 |
| | | §411.653 | Definitions | | | | | | | | | Definitions | §411.653 |
| | | §411.654 | Services to Individuals | | | | | | | | | Services to Individuals | §411.654 |
| | | §411.655 | Responsibility for Compliance | | | | | | | | | Responsibility for Compliance | §411.655 |
| | | §411.656 | TDMHMR Central Office Responsibilities | | | | | | | | | TDMHMR Central Office Responsibilities | §411.656 |
| | **2** | | **Organizational Standards** | | | | | | | | **2** | **Organizational Standards** | |
| | | §411.657 | Access to Services | | | | | | | | | Access to Services | §411.657 |
| | | §411.658 | Specialty Competencies of Staff Providing Services to Individuals with COPSD | | | | | | | | | Specialty Competencies of Staff Providing Services to Individuals with COPSD | §411.658 |
| | | §411.659 | Quality Management | | | | | | | | | Quality Management | §411.659 |
| | **3** | | **Standards of Care** | | | | | | | | **3** | **Standards of Care** | |
| | | §411.660 | Screening, Assessment, and Treatment Planning | | | | | | | | | Screening, Assessment, and Treatment Planning | §411.660 |
| | **4** | | **References and Distribution** | | | | | | | | **4** | **References and Distribution** | |
| | | §411.661 | References | | | | | | | | | References | §411.661 |
| | | §411.662 | Distribution | | | | | | | | | Distribution | §411.662 |

| Chapter 412. Local Authority Responsibilties | | | | Chapter 2. Mental Retardation Authority Responsibilties | | | | Chapter 412. Local Mental Health Authority Responsibilties | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Subch. & Division | | Section | Heading | Subch. & Division | | Heading | Section | Subch. & Division | | Heading | Section |
| **B** | | | **Contracts Management for Local Authorities** | **B** | | **Contracts Management for Local Authorities** | | **B** | | **Contracts Management for Local Authorities** | |
| | | §412.51 | Purpose | | | Purpose | §2.51 | | | Purpose | §412.51 |
| | | §412.52 | Application | | | Application | §2.52 | | | Application | §412.52 |
| | | §412.53 | Definitions | | | Definitions | §2.53 | | | Definitions | §412.53 |
| | | §412.54 | Accountability | | | Accountability | §2.54 | | | Accountability | §412.54 |
| | | §412.55 | Procurement | | | Procurement | §2.55 | | | Procurement | §412.55 |
| | | §412.56 | Community Services Contracting Requirements | | | Community Services Contracting Requirements | §2.56 | | | Community Services Contracting Requirements | §412.56 |
| | | §412.57 | Provisions for Community Services Contracts | | | Provisions for Community Services Contracts | §2.57 | | | Provisions for Community Services Contracts | §412.57 |
| | | §412.58 | Competitive Procurement Methods for Community Services | | | Competitive Procurement Methods for Community Services | §2.58 | | | Competitive Procurement Methods for Community Services | §412.58 |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §412.59 | Non-competitive Procurement of Community Services | | | Non-competitive Procurement of Community Services | §2.59 | | | Non-competitive Procurement of Community Services | §412.59 |
| | | §412.60 | Open Enrollment | | | Open Enrollment | §2.60 | | | Open Enrollment | §412.60 |
| | | §412.61 | Consumer Access to Participating Community Services Contractors in Provider Network | | | Consumer Access to Participating Community Services Contractors in Provider Network | §2.61 | | | Consumer Access to Participating Community Services Contractors in Provider Network | §412.61 |
| | | §412.62 | Monitoring and Enforcing Community Services Contracts | | | Monitoring and Enforcing Community Services Contracts | §2.62 | | | Monitoring and Enforcing Community Services Contracts | §412.62 |
| | | §412.63 | References | | | References | §2.63 | | | References | §412.63 |
| | | §412.64 | Distribution | | | Distribution | §2.64 | | | Distribution | §412.64 |
| **C** | | | **Charges for Community Services** | **C** | | **Charges for Community Services** | | **C** | | **Charges for Community Services** | |
| | | §412.101 | Purpose | | | Purpose | §2.101 | | | Purpose | §412.101 |
| | | §412.102 | Application | | | Application | §2.102 | | | Application | §412.102 |
| | | §412.103 | Definitions | | | Definitions | §2.103 | | | Definitions | §412.103 |
| | | §412.104 | Principles | | | Principles | §2.104 | | | Principles | §412.104 |
| | | §412.105 | Accountability | | | Accountability | §2.105 | | | Accountability | §412.105 |
| | | §412.106 | Determination of Ability to Pay | | | Determination of Ability to Pay | §2.106 | | | Determination of Ability to Pay | §412.106 |
| | | §412.107 | Standard Charges | | | Standard Charges | §2.107 | | | Standard Charges | §412.107 |
| | | §412.108 | Billing Procedures | | | Billing Procedures | §2.108 | | | Billing Procedures | §412.108 |
| | | §412.109 | Payments, Collections, and Non-payment | | | Payments, Collections, and Non-payment | §2.109 | | | Payments, Collections, and Non-payment | §412.109 |
| | | §412.110 | Monthly Ability-to-Pay Fee Schedule | | | Monthly Ability-to-Pay Fee Schedule | §2.110 | | | Monthly Ability-to-Pay Fee Schedule | §412.110 |
| | | §412.111 | Training | | | Training | §2.111 | | | Training | §412.111 |
| | | §412.112 | Brochure for Persons (and Parents) | | | Brochure for Persons (and Parents) | §2.112 | | | Brochure for Persons (and Parents) | §412.112 |
| | | §412.113 | Exhibit | | | Exhibit | §2.113 | | | Exhibit | §412.113 |
| | | §412.114 | References | | | References | §2.114 | | | References | §412.114 |
| | | §412.115 | Distribution | | | Distribution | §2.115 | | | Distribution | §412.115 |
| **D** | | | **Mental Health Services--Admission, Continuity, and Discharge** | **D** | | **Mental Health Services--Admission, Continuity, and Discharge** | | **D** | | **Mental Health Services--Admission, Continuity, and Discharge** | |
| | **1** | | **General Provisions** | | | | | | **1** | **General Provisions** | |
| | | §412.151 | Purpose | | | | | | | Purpose | §412.151 |
| | | §412.152 | Application | | | | | | | Application | §412.152 |
| | | §412.153 | Definitions | | | | | | | Definitions | §412.153 |
| | | §412.154 | Utilization Management Agreement Between SMHF and LMHA | | | | | | | Utilization Management Agreement Between SMHF and LMHA | §412.154 |
| | **2** | | **Screening and Assessment for Crisis Services and Admission into LMHA Services--LMHA Responsibilities** | | | | | | **2** | **Screening and Assessment for Crisis Services and Admission into LMHA Services--LMHA Responsibilities** | |
| | | §412.161 | Screening and Assessment | | | | | | | Screening and Assessment | §412.161 |
| | | §412.162 | Determining County of Residence | | | | | | | Determining County of Residence | §412.162 |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §412.163 | Most Appropriate and Available Treatment Alternative | | | Most Appropriate and Available Treatment Alternative | §2.151 | | | Most Appropriate and Available Treatment Alternative | §412.163 |
| | 3 | | **Admission to SMHFs--SMHF Responsibilities** | | | | | | 3 | **Admission to SMHFs--SMHF Responsibilities** | |
| | | §412.171 | General Admission Criteria | | | | | | | General Admission Criteria | §412.171 |
| | | §412.172 | Admission Criteria for Maximum Security Unit at North Texas State Hospital--Vernon Campus | | | | | | | Admission Criteria for Maximum Security Unit at North Texas State Hospital--Vernon Campus | §412.172 |
| | | §412.173 | Admission Criteria For Adolescent Forensic Unit at North Texas State Hospital--Vernon Campus | | | | | | | Admission Criteria For Adolescent Forensic Unit at North Texas State Hospital--Vernon Campus | §412.173 |
| | | §412.174 | Admission Criteria for Waco Center for Youth | | | | | | | Admission Criteria for Waco Center for Youth | §412.174 |
| | | §412.175 | Voluntary Admission | | | | | | | Voluntary Admission | §412.175 |
| | | §412.176 | Emergency Detention | | | | | | | Emergency Detention | §412.176 |
| | | §412.177 | Admission Under Order of Protective Custody or Court-ordered Inpatient Mental Health Services | | | | | | | Admission Under Order of Protective Custody or Court-ordered Inpatient Mental Health Services | §412.177 |
| | | §412.178 | Admission Procedures | | | | | | | Admission Procedures | §412.178 |
| | | §412.179 | Voluntary Treatment Following Involuntary Admission | | | | | | | Voluntary Treatment Following Involuntary Admission | §412.179 |
| | 4 | | **Transfers and Changing LMHAs** | | | | | | 4 | **Transfers and Changing LMHAs** | |
| | | §412.191 | Transfers Between SMHFs | | | | | | | Transfers Between SMHFs | §412.191 |
| | | §412.192 | Transfers Between a SMHF and a SMRF | | | | | | | Transfers Between a SMHF and a SMRF | §412.192 |
| | | §412.193 | Transfers Between a SMHF and an Out-of-State Institution | | | | | | | Transfers Between a SMHF and an Out-of-State Institution | §412.193 |
| | | §412.194 | Transfers Between a SMHF and Another Institution in Texas | | | | | | | Transfers Between a SMHF and Another Institution in Texas | §412.194 |
| | | §412.195 | Changing LMHAs | | | | | | | Changing LMHAs | §412.195 |
| | 5 | | **Discharge and ATP from SMHF** | | | | | | 5 | **Discharge and ATP from SMHF** | |
| | | §412.201 | Discharge Planning | | | | | | | Discharge Planning | §412.201 |
| | | §412.202 | Special Considerations | | | Special Considerations | §2.152 | | | Special Considerations | §412.202 |
| | | §412.203 | Discharge of Voluntary Patients | | | | | | | Discharge of Voluntary Patients | §412.203 |
| | | §412.204 | Discharge of Involuntary Patients | | | | | | | Discharge of Involuntary Patients | §412.204 |
| | | §412.205 | Absences From a SMHF | | | | | | | Absences From a SMHF | §412.205 |
| | | §412.206 | Absence for Trial Placement (ATP) | | | | | | | Absence for Trial Placement (ATP) | §412.206 |
| | | §412.207 | Procedures Upon Discharge or ATP | | | | | | | Procedures Upon Discharge or ATP | §412.207 |
| | | §412.208 | Post Discharge/ATP: Contact and Implementation of Continuing Care Plan | | | | | | | Post Discharge/ATP: Contact and Implementation of Continuing Care Plan | §412.208 |
| | 6 | | **Discharge from LMHA Services** | | | | | | 6 | **Discharge from LMHA Services** | |
| | | §412.221 | Discharge From LMHA Services | | | | | | | Discharge From LMHA Services | §412.221 |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 7 | | **Training, References, and Distribution** | | | | | | 7 | **Training, References, and Distribution** | |
| | | §412.231 | Assessment and Intake Training Requirements at a SMHF | | | | | | | Assessment and Intake Training Requirements at a SMHF | §412.231 |
| | | §412.232 | References | | | | | | | References | §412.232 |
| | | §412.233 | Distribution | | | | | | | Distribution | §412.233 |
| F | | | **Continuity of Services--State Mental Retardation Facilities** | F | | **Continuity of Services--State Mental Retardation Facilities** | | F | | **Continuity of Services--State Mental Retardation Facilities** | |
| | 1 | | **General Provisions** | | 1 | **General Provisions** | | | | | |
| | | §412.251 | Purpose | | | Purpose | §2.251 | | | | |
| | | §412.252 | Application | | | Application | §2.252 | | | | |
| | | §412.253 | Definitions | | | Definitions | §2.253 | | | | |
| | | §412.254 | Department's Philosophy Concerning Continuum of Care | | | Department's Philosophy Concerning Continuum of Care | §2.254 | | | | |
| | 2 | | **Admission and Commitment** | | 2 | **Admission and Commitment** | | | | | |
| | | §412.255 | Criteria for Commitment and Regular Voluntary Admission of an Adult to a State MR Facility Under the PMRA | | | Criteria for Commitment and Regular Voluntary Admission of an Adult to a State MR Facility Under the PMRA | §2.255 | | | | |
| | | §412.256 | Criteria for Commitment of an Adult under the Texas Code of Criminal Procedure | | | Criteria for Commitment of an Adult under the Texas Code of Criminal Procedure | §2.256 | | | | |
| | | §412.257 | Criteria for Commitment of a Minor to a State MR Facility Under the PMRA | | | Criteria for Commitment of a Minor to a State MR Facility Under the PMRA | §2.257 | | | | |
| | | §412.258 | Criteria for Placement of a Minor in a State MR Facility for Assessment Under the Texas Family Code | | | Criteria for Placement of a Minor in a State MR Facility for Assessment Under the Texas Family Code | §2.258 | | | | |
| | | §412.259 | Criteria for Commitment of a Minor to a State MR Facility Under the Texas Family Code | | | Criteria for Commitment of a Minor to a State MR Facility Under the Texas Family Code | §2.259 | | | | |
| | | §412.260 | Criteria for Regular Voluntary Admission of a Minor to a State MR Facility under the PMRA | | | Criteria for Regular Voluntary Admission of a Minor to a State MR Facility under the PMRA | §2.260 | | | | |
| | | §412.261 | Criteria for Emergency Admission of an Adult or a Minor to a State MR Facility Under the PMRA | | | Criteria for Emergency Admission of an Adult or a Minor to a State MR Facility Under the PMRA | §2.261 | | | | |
| | | §412.262 | Criteria for Admission of an Adult or a Minor to a State MR Facility for Respite Care Under the PMRA | | | Criteria for Admission of an Adult or a Minor to a State MR Facility for Respite Care Under the PMRA | §2.262 | | | | |
| | | §412.263 | Criteria for an Order of Protective Custody | | | Criteria for an Order of Protective Custody | §2.263 | | | | |
| | | §412.264 | MRA IDT Recommendation Concerning the Commitment of an Adult or a Minor or the Regular Voluntary Admission of an Adult to a State MR Facility Under the PMRA | | | MRA IDT Recommendation Concerning the Commitment of an Adult or a Minor or the Regular Voluntary Admission of an Adult to a State MR Facility Under the PMRA | §2.264 | | | | |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §412.265 | MRA Referral of an Applicant to a State MR Facility | | | MRA Referral of an Applicant to a State MR Facility | §2.265 | | | | |
| | | §412.266 | Process for Admission of an Adult or a Minor Who Has Been Committed to a State MR Facility Under the PMRA | | | Process for Admission of an Adult or a Minor Who Has Been Committed to a State MR Facility Under the PMRA | §2.266 | | | | |
| | | §412.267 | Process for the Regular Voluntary Admission of an Adult to a State MR Facility Under the PMRA | | | Process for the Regular Voluntary Admission of an Adult to a State MR Facility Under the PMRA | §2.267 | | | | |
| | | §412.268 | Process for Placement of Minor under the Texas Family Code in a State MR Facility | | | Process for Placement of Minor under the Texas Family Code in a State MR Facility | §2.268 | | | | |
| | | §412.269 | Process for the Emergency Admission of an Adult or a Minor to a State MR Facility Under the PMRA | | | Process for the Emergency Admission of an Adult or a Minor to a State MR Facility Under the PMRA | §2.269 | | | | |
| | | §412.270 | Process for Admission of an Adult or a Minor to a State MR Facility for Respite Care Under the PMRA | | | Process for Admission of an Adult or a Minor to a State MR Facility for Respite Care Under the PMRA | §2.270 | | | | |
| | 3 | | **Transfers** | | 3 | **Transfers** | | | | | |
| | | §412.271 | Transfer of an Individual Between State MR Facilities | | | Transfer of an Individual Between State MR Facilities | §2.271 | | | | |
| | | §412.272 | Transfer of an Individual from a State MR Facility to a State MH Facility | | | Transfer of an Individual from a State MR Facility to a State MH Facility | §2.272 | | | Transfer of an Individual from a State MR Facility to a State MH Facility | §412.272 |
| | | §412.273 | Transfer of an Individual from a State MH Facility to a State MR Facility | | | Transfer of an Individual from a State MH Facility to a State MR Facility | §2.273 | | | | |
| | 4 | | **Moving from a State MR Facility to an Alternative Living Arrangement** | | 4 | **Moving from a State MR Facility to an Alternative Living Arrangement** | | | | | |
| | | §412.274 | Consideration of Living Options for Individuals Residing in State MR Facilities | | | Consideration of Living Options for Individuals Residing in State MR Facilities | §2.274 | | | | |
| | | §412.275 | Accessing Alternative Living Arrangements for an Individual Residing in a State MR Facility Who Has the Ability to Provide Legally Adequate Consent or Has a Legally Authorized Representative (LAR) | | | Accessing Alternative Living Arrangements for an Individual Residing in a State MR Facility Who Has the Ability to Provide Legally Adequate Consent or Has a Legally Authorized Representative (LAR) | §2.275 | | | | |
| | | §412.276 | Accessing Alternative Living Arrangements for an Individual Residing in a State MR Facility Who Does Not Have the Ability to Give Legally Adequate Consent and Who Does Not Have a Legally Authorized Representative (LAR) | | | Accessing Alternative Living Arrangements for an Individual Residing in a State MR Facility Who Does Not Have the Ability to Give Legally Adequate Consent and Who Does Not Have a Legally Authorized Representative (LAR) | §2.276 | | | | |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §412.277 | Arrangements for the Move to an Alternative Living Arrangement of an Individual Residing in a State MR Facility | | | Arrangements for the Move to an Alternative Living Arrangement of an Individual Residing in a State MR Facility | §2.277 | | | | |
| | | §412.278 | Community Living/Discharge Plan for Alternative Living Arrangements | | | Community Living/Discharge Plan for Alternative Living Arrangements | §2.278 | | | | |
| | 5 | | **Discharge** | | 5 | **Discharge** | | | | | |
| | | §412.279 | Discharge from a State MR Facility of an Individual Who Moves to an Alternative Living Arrangement | | | Discharge from a State MR Facility of an Individual Who Moves to an Alternative Living Arrangement | §2.279 | | | | |
| | | §412.280 | Administrative Discharges Initiated by a State MR Facility | | | Administrative Discharges Initiated by a State MR Facility | §2.280 | | | | |
| | | §412.281 | Administrative Discharges from a Voluntary Admission Initiated by an Individual or LAR | | | Administrative Discharges from a Voluntary Admission Initiated by an Individual or LAR | §2.281 | | | | |
| | 6 | | **Special Considerations for Individuals Who Moved from a State MR Facility to an Alternative Living Arrangement Prior to September 1, 1997** | | 6 | **Special Considerations for Individuals Who Moved from a State MR Facility to an Alternative Living Arrangement Prior to September 1, 1997** | | | | | |
| | | §412.282 | Review by Local MRA of Individual in a Community Living Arrangement | | | Review by Local MRA of Individual in a Community Living Arrangement | §2.282 | | | | |
| | 7 | | **References and Distribution** | | 7 | **References and Distribution** | | | | | |
| | | §412.283 | References | | | References | §2.283 | | | | |
| | | §412.284 | Distribution | | | Distribution | §2.284 | | | | |
| G | | | **Mental Health Community Services Standards** | | | | | G | | **Mental Health Community Services Standards** | |
| | 1 | | **General Provisions** | | | | | | 1 | **General Provisions** | |
| | | §412.301 | Purpose | | | | | | | Purpose | §412.301 |
| | | §412.302 | Application | | | | | | | Application | §412.302 |
| | | §412.303 | Definitions | | | | | | | Definitions | §412.303 |
| | | §412.304 | Responsibility for Compliance | | | | | | | Responsibility for Compliance | §412.304 |
| | | §412.305 | TDMHMR Responsibilities | | | | | | | TDMHMR Responsibilities | §412.305 |
| | | §412.306 | Outcomes for Mental Health Community Services | | | | | | | Outcomes for Mental Health Community Services | §412.306 |
| | 2 | | **Organizational Standards** | | | | | | 2 | **Organizational Standards** | |
| | | §412.307 | Leadership | | | | | | | Leadership | §412.307 |
| | | §412.308 | Environment of Care and Safety | | | | | | | Environment of Care and Safety | §412.308 |
| | | §412.309 | Rights and Protection | | | | | | | Rights and Protection | §412.309 |
| | | §412.310 | Access to Mental Health Community Services | | | | | | | Access to Mental Health Community Services | §412.310 |
| | | §412.311 | Medical Records System | | | | | | | Medical Records System | §412.311 |
| | | §412.312 | Competency and Credentialing | | | | | | | Competency and Credentialing | §412.312 |
| | | §412.313 | Quality Management | | | | | | | Quality Management | §412.313 |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 3 | | **Standard of Care** | | | | | | | 3 | **Standard of Care** | |
| | | §412.314 | Crisis Services | | | | | | | | Crisis Services | §412.314 |
| | | §412.315 | Assessment and Treatment Planning | | | | | | | | Assessment and Treatment Planning | §412.315 |
| | | §412.316 | Additional Standards of Care Specific to Mental Health Community Services for Children and Adolescents | | | | | | | | Additional Standards of Care Specific to Mental Health Community Services for Children and Adolescents | §412.316 |
| | 4 | | **Service Standards** | | | | | | | 4 | **Service Standards** | |
| | | §412.317 | Rehabilitative Services | | | | | | | | Rehabilitative Services | §412.317 |
| | | §412.318 | Supported Employment | | | | | | | | Supported Employment | §412.318 |
| | | §412.319 | Supported Housing | | | | | | | | Supported Housing | §412.319 |
| | | §412.320 | Assertive Community Treatment (ACT) | | | | | | | | Assertive Community Treatment (ACT) | §412.320 |
| | 5 | | **References and Distribution** | | | | | | | 5 | **References and Distribution** | |
| | | §412.321 | References | | | | | | | | References | §412.321 |
| | | §412.322 | Distribution | | | | | | | | Distribution | §412.322 |
| H | | | **Standards and Quality Assurance for Mental Retardation Community Services and Supports** | H | | **Standards and Quality Assurance for Mental Retardation Community Services and Supports** | | | | | | |
| | | §412.351 | Purpose | | | Purpose | §2.351 | | | | | |
| | | §412.352 | Application | | | Application | §2.352 | | | | | |
| | | §412.353 | Definitions | | | Definitions | §2.353 | | | | | |
| | | §412.354 | Responsibilities of Local MRAs and Designated Providers | | | Responsibilities of Local MRAs and Designated Providers | §2.354 | | | | | |
| | | §412.355 | Self-assessment by Local MRAs and Designated Providers | | | Self-assessment by Local MRAs and Designated Providers | §2.355 | | | | | |
| | | §412.356 | Outcome Measures for People | | | Outcome Measures for People | §2.356 | | | | | |
| | | §412.357 | Outcome Measures for Organizations | | | Outcome Measures for Organizations | §2.357 | | | | | |
| | | §412.358 | Quality Improvement Plan | | | Quality Improvement Plan | §2.358 | | | | | |
| | | §412.359 | External Validation | | | External Validation | §2.359 | | | | | |
| | | §412.360 | Encouraging Full Expression of Legal and Civil Rights | | | Encouraging Full Expression of Legal and Civil Rights | §2.360 | | | | | |
| | | §412.361 | Human Resources | | | Human Resources | §2.361 | | | | | |
| | | §412.362 | Medication Practice and Health Related Services | | | Medication Practice and Health Related Services | §2.362 | | | | | |
| | | §412.363 | Infection Control | | | Infection Control | §2.363 | | | | | |
| | | §412.364 | Behavior Management | | | Behavior Management | §2.364 | | | | | |
| | | §412.365 | Psychoactive Medications | | | Psychoactive Medications | §2.365 | | | | | |
| | | §412.366 | Consumer Records | | | Consumer Records | §2.366 | | | | | |
| | | §412.367 | Environmental Requirements | | | Environmental Requirements | §2.367 | | | | | |
| | | §412.368 | Respite Services | | | Respite Services | §2.368 | | | | | |
| | | §412.369 | Additional Requirements | | | Additional Requirements | §2.369 | | | | | |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §412.370 | Exhibits | | | Exhibits | §2.370 | | | | |
| | | §412.371 | Training | | | Training | §2.371 | | | | |
| | | §412.372 | References | | | References | §2.372 | | | | |
| | | §412.373 | Distribution | | | Distribution | §2.373 | | | | |
| I | | | **Mental Health Case Management Services** | | | | | I | | **Mental Health Case Management Services** | |
| | | §412.401 | Purpose | | | | | | | Purpose | §412.401 |
| | | §412.402 | Application | | | | | | | Application | §412.402 |
| | | §412.403 | Definitions | | | | | | | Definitions | §412.403 |
| | | §412.404 | Provider Requirements | | | | | | | Provider Requirements | §412.404 |
| | | §412.405 | Eligibility for MH Case Management Services | | | | | | | Eligibility for MH Case Management Services | §412.405 |
| | | §412.406 | Establishing Type, Amount, and Duration of MH Case Management Services | | | | | | | Establishing Type, Amount, and Duration of MH Case Management Services | §412.406 |
| | | §412.407 | MH Case Management Services | | | | | | | MH Case Management Services | §412.407 |
| | | §412.408 | Service Limitations | | | | | | | Service Limitations | §412.408 |
| | | §412.409 | Notification and Terminations | | | | | | | Notification and Terminations | §412.409 |
| | | §412.410 | Staff Qualifications | | | | | | | Staff Qualifications | §412.410 |
| | | §412.411 | Staff Training | | | | | | | Staff Training | §412.411 |
| | | §412.412 | Documentation of MH Case Management Services | | | | | | | Documentation of MH Case Management Services | §412.412 |
| | | §412.413 | Medicaid Reimbursement | | | | | | | Medicaid Reimbursement | §412.413 |
| | | §412.414 | Fair Hearings | | | | | | | Fair Hearings | §412.414 |
| | | §412.415 | Exhibits | | | | | | | Exhibits | §412.415 |
| | | §412.416 | References | | | | | | | References | §412.416 |
| | | §412.417 | Distribution | | | | | | | Distribution | §412.417 |
| L | | | **Service Coordination for Individuals with Mental Retardation** | L | | **Service Coordination for Individuals with Mental Retardation** | | | | | |
| | | §412.551 | Purpose | | | Purpose | §2.551 | | | | |
| | | §412.552 | Application | | | Application | §2.552 | | | | |
| | | §412.553 | Definitions | | | Definitions | §2.553 | | | | |
| | | §412.554 | Eligibility | | | Eligibility | §2.554 | | | | |
| | | §412.555 | Assessing an Individual's Need for Service Coordination | | | Assessing an Individual's Need for Service Coordination | §2.555 | | | | |
| | | §412.556 | MRA's Responsibilities | | | MRA's Responsibilities | §2.556 | | | | |
| | | §412.557 | Caseloads | | | Caseloads | §2.557 | | | | |
| | | §412.558 | Termination of Service Coordination | | | Termination of Service Coordination | §2.558 | | | | |
| | | §412.559 | Minimum Qualifications | | | Minimum Qualifications | §2.559 | | | | |
| | | §412.560 | Staff Training | | | Staff Training | §2.560 | | | | |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §412.561 | Documentation of Service Coordination | | | Documentation of Service Coordination | §2.561 | | | | |
| | | §412.562 | Review Process | | | Review Process | §2.562 | | | | |
| | | §412.563 | Subchapter Supercedes Chapter 412, Subchapter J | | | Subchapter Supercedes Chapter 412, Subchapter J | §2.563 | | | | |
| | | §412.564 | References | | | References | §2.564 | | | | |
| | | §412.565 | Distribution | | | Distribution | §2.565 | | | | |
| **Z** | | | **Jail Diversion Pilot Program** | | | | | **Z** | | **Jail Diversion Pilot Program** | |
| | | §412.951 | Purpose | | | | | | | Purpose | §412.951 |
| | | §412.952 | Application | | | | | | | Application | §412.952 |
| | | §412.953 | Definitions | | | | | | | Definitions | §412.953 |
| | | §412.954 | Mental Health Evaluation | | | | | | | Mental Health Evaluation | §412.954 |
| | | §412.955 | Eligibility for Jail Diversion | | | | | | | Eligibility for Jail Diversion | §412.955 |
| | | §412.956 | Obtaining Informed Consent for the Evaluation | | | | | | | Obtaining Informed Consent for the Evaluation | §412.956 |
| | | §412.957 | Recommendations and Documentation | | | | | | | Recommendations and Documentation | §412.957 |
| | | §412.958 | Audiovisual Telecommunication Equipment | | | | | | | Audiovisual Telecommunication Equipment | §412.958 |
| | | §412.959 | References | | | | | | | References | §412.959 |
| | | §412.960 | Distribution | | | | | | | Distribution | §412.960 |

| Chapter 414. Protection of Consumers and Consumer Rights | | | | Chapter 4. Rights and Protection of Individuals Receiving Mental Retardation Services | | | | Chapter 414. Rights and Protection of Persons Receiving Mental Health Services | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Subch & Division | | Section | Heading | Subch. & Division | | Heading | Section | Subch. & Division | | Heading | Section |
| **A** | | | **Protected Health Information** | **A** | | **Protected Health Information** | | **A** | | **Protected Health Information** | |
| | | §414.1 | Purpose | | | Purpose | §4.1 | | | Purpose | §414.1 |
| | | §414.2 | Application | | | Application | §4.2 | | | Application | §414.2 |
| | | §414.3 | Definitions | | | Definitions | §4.3 | | | Definitions§ | §414.3 |
| | | §414.4 | Requirements | | | Requirements | §4.4 | | | Requirements | §414.4 |
| | | §414.5 | Regulations and Statutes Governing Confidentiality of Protected Health Information | | | Regulations and Statutes Governing Confidentiality of Protected Health Information | §4.5 | | | Regulations and Statutes Governing Confidentiality of Protected Health Information | §414.5 |
| | | §414.6 | Exhibit | | | Exhibit | §4.6 | | | Exhibit | §414.6 |
| | | §414.7 | References | | | References | §4.7 | | | References | §414.7 |
| | | §414.8 | Distribution | | | Distribution | §4.8 | | | Distribution | §414.8 |
| **D** | | | **Administrative Hearings Under the PMRA** | **D** | | **Administrative Hearings Under the PMRA** | | | | | |
| | | §414.151 | Purpose | | | Purpose | §4.151 | | | | |
| | | §414.152 | Application | | | Application | §4.152 | | | | |
| | | §414.153 | Definitions | | | Definitions | §4.153 | | | | |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §414.154 | General Principles | | | General Principles | §4.154 | | | | |
| | | §414.155 | Notice | | | Notice | §4.155 | | | | |
| | | §414.156 | Request for an Administrative Hearing | | | Request for an Administrative Hearing | §4.156 | | | | |
| | | §414.157 | Preliminary Matters | | | Preliminary Matters | §4.157 | | | | |
| | | §414.158 | Burden of Proof | | | Burden of Proof | §4.158 | | | | |
| | | §414.159 | The Administrative Hearing | | | The Administrative Hearing | §4.159 | | | | |
| | | §414.160 | Hearing Officer's Decision | | | Hearing Officer's Decision | §4.160 | | | | |
| | | §414.161 | References | | | References | §4.161 | | | | |
| | | §414.162 | Distribution | | | Distribution | §4.162 | | | | |
| I | | | **Consent to Treatment with Psychoactive Medication--Mental Health Services** | | | | | I | | **Consent to Treatment with Psychoactive Medication--Mental Health Services** | |
| | | §414.401 | Purpose | | | | | | | Purpose | §414.401 |
| | | §414.402 | Application | | | | | | | Application | §414.402 |
| | | §414.403 | Definitions | | | | | | | Definitions | §414.403 |
| | | §414.404 | Information Required To Be Given | | | | | | | Information Required To Be Given | §414.404 |
| | | §414.405 | Documentation of Informed Consent | | | | | | | Documentation of Informed Consent | §414.405 |
| | | §414.406 | Patients Admitted under Texas Statutes | | | | | | | Patients Admitted under Texas Statutes | §414.406 |
| | | §414.407 | Patients Committed to Mental Health Facilities under Provisions of the Texas Health and Safety Code | | | | | | | Patients Committed to Mental Health Facilities under Provisions of the Texas Health and Safety Code | §414.407 |
| | | §414.408 | Patients Committed to Mental Health Facilities under Provisions Other than Those Found in the Texas Health and Safety Code (i.e., Code of Criminal Procedure, Family Code) | | | | | | | Patients Committed to Mental Health Facilities under Provisions Other than Those Found in the Texas Health and Safety Code (i.e., Code of Criminal Procedure, Family Code) | §414.408 |
| | | §414.409 | Involuntary Administration of Medication to Patients Committed to Mental Health Facilities under the Texas Health and Safety Code or by Court Order | | | | | | | Involuntary Administration of Medication to Patients Committed to Mental Health Facilities under the Texas Health and Safety Code or by Court Order | §414.409 |
| | | §414.410 | Psychiatric Emergencies | | | | | | | Psychiatric Emergencies | §414.410 |
| | | §414.411 | Order Authorizing Administration of Psychoactive Medication | | | | | | | Order Authorizing Administration of Psychoactive Medication | §414.411 |
| | | §414.412 | Designation of Medication Classes | | | | | | | Designation of Medication Classes | §414.412 |
| | | §414.413 | Monitoring Compliance with Policies and Procedures | | | | | | | Monitoring Compliance with Policies and Procedures | §414.413 |
| | | §414.414 | References | | | | | | | References | §414.414 |
| | | §414.415 | Distribution | | | | | | | Distribution | §414.415 |
| K | | | **Criminal History and Registry Clearances** | K | | **Criminal History and Registry Clearances** | | K | | **Criminal History and Registry Clearances** | |
| | | §414.501 | Purpose | | | Purpose | §4.501 | | | Purpose | §414.501 |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §414.502 | Application | | | Application | §4.502 | | | Application | §414.502 |
| | | §414.503 | Definitions | | | Definitions | §4.503 | | | Definitions | §414.503 |
| | | §414.504 | Pre-employment and Pre-assignment Clearance | | | Pre-employment and Pre-assignment Clearance | §4.504 | | | Pre-employment and Pre-assignment Clearance | §414.504 |
| | | §414.505 | Obtaining or Requesting Criminal History Record Information and Checking Registry | | | Obtaining or Requesting Criminal History Record Information and Checking Registry | §4.505 | | | Obtaining or Requesting Criminal History Record Information and Checking Registry | §414.505 |
| | | §414.506 | Criminal History Record Information and Registry Information | | | Criminal History Record Information and Registry Information | §4.506 | | | Criminal History Record Information and Registry Information | §414.506 |
| | | §414.507 | Self-Reporting and Subsequent Criminal History and Registry Checks | | | Self-Reporting and Subsequent Criminal History and Registry Checks | §4.507 | | | Self-Reporting and Subsequent Criminal History and Registry Checks | §414.507 |
| | | §414.508 | References | | | References | §4.508 | | | References | §414.508 |
| | | §414.509 | Distribution | | | Distribution | §4.509 | | | Distribution | §414.509 |
| L | | | **Abuse, Neglect, and Exploitation in Local Authorities and Community Centers** | L | | **Abuse, Neglect, and Exploitation in Local Authorities and Community Centers** | | L | | **Abuse, Neglect, and Exploitation in Local Authorities and Community Centers** | |
| | | §414.551 | Purpose | | | Purpose | §4.551 | | | Purpose | §414.551 |
| | | §414.552 | Application | | | Application | §4.552 | | | Application | §414.552 |
| | | §414.553 | Definitions | | | Definitions | §4.553 | | | Definitions | §414.553 |
| | | §414.554 | Responsibilities of Local Authorities, Community Centers, and Contractors | | | Responsibilities of Local Authorities, Community Centers, and Contractors | §4.554 | | | Responsibilities of Local Authorities, Community Centers, and Contractors | §414.554 |
| | | §414.555 | Information To Be Provided to Victim or Alleged Victim and Others | | | Information To Be Provided to Victim or Alleged Victim and Others | §4.555 | | | Information To Be Provided to Victim or Alleged Victim and Others | §414.555 |
| | | §414.556 | Investigations Conducted by the Texas Department of Protective and Regulatory Services (TDPRS) | | | Investigations Conducted by the Texas Department of Protective and Regulatory Services (TDPRS) | §4.556 | | | Investigations Conducted by the Texas Department of Protective and Regulatory Services (TDPRS) | §414.556 |
| | | §414.557 | Disciplinary and Other Action | | | Disciplinary and Other Action | §4.557 | | | Disciplinary and Other Action | §414.557 |
| | | §414.558 | Data Reporting Responsibilities | | | Data Reporting Responsibilities | §4.558 | | | Data Reporting Responsibilities | §414.558 |
| | | §414.559 | Confidentiality of Investigative Process and Report | | | Confidentiality of Investigative Process and Report | §4.559 | | | Confidentiality of Investigative Process and Report | §414.559 |
| | | §414.560 | Competency of Employees and Agents | | | Competency of Employees and Agents | §4.560 | | | Competency of Employees and Agents | §414.560 |
| | | §414.561 | TDMHMR Oversight Responsibilities | | | TDMHMR Oversight Responsibilities | §4.561 | | | TDMHMR Oversight Responsibilities | §414.561 |
| | | §414.562 | Exhibits | | | Exhibits | §4.562 | | | Exhibits | §414.562 |
| | | §414.563 | References | | | References | §4.563 | | | References | §414.563 |
| | | §414.564 | Distribution | | | Distribution | §4.564 | | | Distribution | §414.564 |
| P | | | **Research in TDMHMR Facilities** | P | | **Research in TDMHMR Facilities** | | P | | **Research in TDMHMR Facilities** | |
| | | §414.751 | Purpose | | | Purpose | §4.751 | | | Purpose | §414.751 |
| | | §414.752 | Application | | | Application | §4.752 | | | Application | §414.752 |
| | | §414.753 | Definitions | | | Definitions | §4.753 | | | Definitions | §414.753 |
| | | §414.754 | General Principles | | | General Principles | §4.754 | | | General Principles | §414.754 |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §414.755 | Designate Institutional Review Board (IRB) | | | Designate Institutional Review Board (IRB) | §4.755 | | | Designate Institutional Review Board (IRB) | §414.755 |
| | | §414.756 | IRB Functions and Operations | | | IRB Functions and Operations | §4.756 | | | IRB Functions and Operations | §414.756 |
| | | §414.757 | Review and Approval of Proposed Research | | | Review and Approval of Proposed Research | §4.757 | | | Review and Approval of Proposed Research | §414.757 |
| | | §414.758 | Informed Consent | | | Informed Consent | §4.758 | | | Informed Consent | §414.758 |
| | | §414.759 | Research Involving Offenders as Human Subjects | | | Research Involving Offenders as Human Subjects | §4.759 | | | Research Involving Offenders as Human Subjects | §414.759 |
| | | §414.760 | Using and Disclosing Protected Health Information (PHI) in Research | | | Using and Disclosing Protected Health Information (PHI) in Research | §4.760 | | | Using and Disclosing Protected Health Information (PHI) in Research | §414.760 |
| | | §414.761 | Investigation of Allegations of Misconduct in Science | | | Investigation of Allegations of Misconduct in Science | §4.761 | | | Investigation of Allegations of Misconduct in Science | §414.761 |
| | | §414.762 | Responsibilities of the Office of Research Administration (ORA) | | | Responsibilities of the Office of Research Administration (ORA) | §4.762 | | | Responsibilities of the Office of Research Administration (ORA) | §414.762 |
| | | §414.763 | Exhibits | | | Exhibits | §4.763 | | | Exhibits | §414.763 |
| | | §414.764 | References | | | References | §4.764 | | | References | §414.764 |
| | | §414.765 | Distribution | | | Distribution | §4.765 | | | Distribution | §414.765 |

| Chapter 415. Provider Clinical Responsibilities | | | | Chapter 5. Provider Clinical Responsibilities--Mental Retardation Services | | | | Chapter 415. Provider Clinical Responsibilities--Mental Health Services | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Subch. & Division | | Section | Heading | Subch. & Division | | Heading | Section | Subch. & Division | | Heading | Section |
| **A** | | | **Prescribing of Psychoactive Medication** | **A** | | **Prescribing of Psychoactive Medication** | | **A** | | **Prescribing of Psychoactive Medication** | |
| | | §415.1 | Purpose | | | Purpose | §5.1 | | | Purpose | §415.1 |
| | | §415.2 | Application | | | Application | §5.2 | | | Application | §415.2 |
| | | §415.3 | Definitions | | | Definitions | §5.3 | | | Definitions | §415.3 |
| | | §415.4 | Philosophy | | | Philosophy | §5.4 | | | Philosophy | §415.4 |
| | | §415.5 | General Principles | | | General Principles | §5.5 | | | General Principles | §415.5 |
| | | §415.6 | Evaluation and Diagnosis | | | Evaluation and Diagnosis | §5.6 | | | Evaluation and Diagnosis | §415.6 |
| | | §415.7 | Prescribing Parameters | | | Prescribing Parameters | §5.7 | | | Prescribing Parameters | §415.7 |
| | | §415.8 | Emergency Use of Psychoactive Medication | | | Emergency Use of Psychoactive Medication | §5.8 | | | Emergency Use of Psychoactive Medication | §415.8 |
| | | §415.9 | Consent and Patient Education | | | Consent and Patient Education | §5.9 | | | Consent and Patient Education | §415.9 |
| | | §415.10 | Medication Monitoring | | | Medication Monitoring | §5.10 | | | Medication Monitoring | §415.10 |
| | | §415.11 | Special Populations | | | Special Populations | §5.11 | | | Special Populations | §415.11 |
| | | §415.12 | Quality Improvement | | | Quality Improvement | §5.12 | | | Quality Improvement | §415.12 |
| | | §415.13 | References | | | References | §5.13 | | | References | §415.13 |
| | | §415.14 | Distribution | | | Distribution | §5.14 | | | Distribution | §415.14 |
| **C** | | | **Use and Maintenance of TDMHMR Drug Formulary** | **C** | | **Use and Maintenance of TDMHMR Drug Formulary** | | **C** | | **Use and Maintenance of TDMHMR Drug Formulary** | |
| | | §415.101 | Purpose | | | Purpose | §5.101 | | | Purpose | §415.101 |
| | | §415.102 | Application | | | Application | §5.102 | | | Application | §415.102 |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §415.103 | Definitions | | | Definitions | §5.103 | | | Definitions | §415.103 |
| | | §415.104 | General Requirements | | | General Requirements | §5.104 | | | General Requirements | §415.104 |
| | | §415.105 | Organization of TDMHMR Drug Formulary | | | Organization of TDMHMR Drug Formulary | §5.105 | | | Organization of TDMHMR Drug Formulary | §415.105 |
| | | §415.106 | Executive Formulary Committee | | | Executive Formulary Committee | §5.106 | | | Executive Formulary Committee | §415.106 |
| | | §415.107 | Responsibilities of the Executive Formulary Committee | | | Responsibilities of the Executive Formulary Committee | §5.107 | | | Responsibilities of the Executive Formulary Committee | §415.107 |
| | | §415.108 | Applying to Have a Drug Added to the Formulary | | | Applying to Have a Drug Added to the Formulary | §5.108 | | | Applying to Have a Drug Added to the Formulary | §415.108 |
| | | §415.109 | Changing the TDMHMR Drug Formulary | | | Changing the TDMHMR Drug Formulary | §5.109 | | | Changing the TDMHMR Drug Formulary | §415.109 |
| | | §415.110 | Prescribing Non-formulary Drugs | | | Prescribing Non-formulary Drugs | §5.110 | | | Prescribing Non-formulary Drugs | §415.110 |
| | | §415.111 | Adverse Drug Reactions | | | Adverse Drug Reactions | §5.111 | | | Adverse Drug Reactions | §415.111 |
| | | §415.112 | Exhibit | | | Exhibit | §5.112 | | | Exhibit | §415.112 |
| | | §415.113 | References | | | References | §5.113 | | | References | §415.113 |
| | | §415.114 | Distribution | | | Distribution | §5.114 | | | Distribution | §415.114 |
| D | | | **Diagnostic Eligibility for Services and Supports--Mental Retardation Priority Population and Related Conditions** | D | | **Diagnostic Eligibility for Services and Supports--Mental Retardation Priority Population and Related Conditions** | | | | | |
| | | §415.151 | Purpose | | | Purpose | §5.151 | | | | |
| | | §415.152 | Application | | | Application | §5.152 | | | | |
| | | §415.153 | Definitions | | | Definitions | §5.153 | | | | |
| | | §415.154 | General Provisions | | | General Provisions | §5.154 | | | | |
| | | §415.155 | Determination of Mental Retardation (DMR) | | | Determination of Mental Retardation (DMR) | §5.155 | | | | |
| | | §415.156 | Review and Endorsement of a DMR | | | Review and Endorsement of a DMR | §5.156 | | | | |
| | | §415.157 | Pervasive Developmental Disorder (PDD) | | | Pervasive Developmental Disorder (PDD) | §5.157 | | | | |
| | | §415.158 | Related Condition (RC) | | | Related Condition (RC) | §5.158 | | | | |
| | | §415.159 | Assessment of Individual's Need for Services and Supports | | | Assessment of Individual's Need for Services and Supports | §5.159 | | | | |
| | | §415.160 | IDT Assessment of Whether Individual Can Be Served Most Appropriately in a State Mental Retardation Facility | | | IDT Assessment of Whether Individual Can Be Served Most Appropriately in a State Mental Retardation Facility | §5.160 | | | | |
| | | §415.161 | TDMHMR-Certified Psychologist | | | TDMHMR-Certified Psychologist | §5.161 | | | | |
| | | §415.162 | References | | | References | §5.162 | | | | |
| | | §415.163 | Distribution | | | Distribution | §5.163 | | | | |
| F | | | **Interventions in Mental Health Programs** | | | | | F | | **Interventions in Mental Health Programs** | |
| | 1 | | **General Provisions** | | | | | | 1 | **General Provisions** | |
| | | §415.251 | Purpose | | | | | | | Purpose | §415.251 |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §415.252 | Application | | | | | | | | Application | §415.252 |
| | | §415.253 | Definitions | | | | | | | | Definitions | §415.253 |
| | | §415.254 | Prohibited Practices | | | | | | | | Prohibited Practices | §415.254 |
| | | §415.255 | Actions To Be Taken in an Emergency While an Individual is in Restraint or Seclusion | | | | | | | | Actions To Be Taken in an Emergency While an Individual is in Restraint or Seclusion | §415.255 |
| | | §415.256 | Mechanical Restraint Devices | | | | | | | | Mechanical Restraint Devices | §415.256 |
| | | §415.257 | Staff Training | | | | | | | | Staff Training | §415.257 |
| | 2 | | **Restraint or Seclusion Initiated in Response to a Behavioral Emergency** | | | | | | | 2 | **Restraint or Seclusion Initiated in Response to a Behavioral Emergency** | |
| | | §415.261 | General Principles for the Use of Restraint or Seclusion Initiated in Response to a Behavioral Emergency | | | | | | | | General Principles for the Use of Restraint or Seclusion Initiated in Response to a Behavioral Emergency | §415.261 |
| | | §415.262 | Initiating Restraint or Seclusion in a Behavioral Emergency | | | | | | | | Initiating Restraint or Seclusion in a Behavioral Emergency | §415.262 |
| | | §415.263 | Time Limitation on an Order for Restraint or Seclusion Initiated in Response to a Behavioral Emergency | | | | | | | | Time Limitation on an Order for Restraint or Seclusion Initiated in Response to a Behavioral Emergency | §415.263 |
| | | §415.264 | Family Notification | | | | | | | | Family Notification | §415.264 |
| | | §415.265 | Disposition of Personal Possessions During Mechanical Restraint or Seclusion | | | | | | | | Disposition of Personal Possessions During Mechanical Restraint or Seclusion | §415.265 |
| | | §415.266 | Restraint in Response to a Behavioral Emergency Occurring Off Facility Premises or During Transportation | | | | | | | | Restraint in Response to a Behavioral Emergency Occurring Off Facility Premises or During Transportation | §415.266 |
| | | §415.267 | Communicating Criteria for Release and Releasing the Individual from Restraint or Seclusion Initiated in Response to a Behavioral Emergency | | | | | | | | Communicating Criteria for Release and Releasing the Individual from Restraint or Seclusion Initiated in Response to a Behavioral Emergency | §415.267 |
| | | §415.268 | Observation, Monitoring, and Care of the Individual in Restraint or Seclusion Initiated in Response to a Behavioral Emergency | | | | | | | | Observation, Monitoring, and Care of the Individual in Restraint or Seclusion Initiated in Response to a Behavioral Emergency | §415.268 |
| | | §415.269 | Safe and Appropriate Techniques for Restraint or Seclusion Initiated in Response to a Behavioral Emergency | | | | | | | | Safe and Appropriate Techniques for Restraint or Seclusion Initiated in Response to a Behavioral Emergency | §415.269 |
| | | §415.270 | Actions To Be Taken When an Individual Falls Asleep in Restraint or Seclusion Initiated in Response to a Behavioral Emergency | | | | | | | | Actions To Be Taken When an Individual Falls Asleep in Restraint or Seclusion Initiated in Response to a Behavioral Emergency | §415.270 |

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §415.271 | Transfer of Primary Responsibility for Patient in Restraint or Seclusion | | | | | | | | Transfer of Primary Responsibility for Patient in Restraint or Seclusion | §415.271 |
| | | §415.272 | Release of an Individual from Restraint or Seclusion Initiated in Response to a Behavioral Emergency | | | | | | | | Release of an Individual from Restraint or Seclusion Initiated in Response to a Behavioral Emergency | §415.272 |
| | | §415.273 | Actions To Be Taken Following Release of an Individual from Restraint or Seclusion Initiated in Response to a Behavioral Emergency | | | | | | | | Actions To Be Taken Following Release of an Individual from Restraint or Seclusion Initiated in Response to a Behavioral Emergency | §415.273 |
| | | §415.274 | Documenting and Reporting Restraint or Seclusion Initiated in Response to a Behavioral Emergency | | | | | | | | Documenting and Reporting Restraint or Seclusion Initiated in Response to a Behavioral Emergency | §415.274 |
| | 3 | | **Restraint During Certain Procedures** | | | | | | | 3 | **Restraint During Certain Procedures** | |
| | | §415.285 | Restraint as Part of Medical, Dental, Diagnostic, or Surgical Procedures | | | | | | | | Restraint as Part of Medical, Dental, Diagnostic, or Surgical Procedures | §415.285 |
| | 4 | | **Procedures That are Not Restraint or Seclusion** | | | | | | | 4 | **Procedures That are Not Restraint or Seclusion** | |
| | | §415.290 | Permitted Practices | | | | | | | | Permitted Practices | §415.290 |
| | | §415.291 | Clinical Timeout and Quiet Time | | | | | | | | Clinical Timeout and Quiet Time | §415.291 |
| | | §415.292 | Protective and Supportive Devices | | | | | | | | Protective and Supportive Devices | §415.292 |
| | 5 | | **References and Distribution** | | | | | | | 5 | **References and Distribution** | |
| | | §415.299 | References | | | | | | | | References | §415.299 |
| | | §415.300 | Distribution | | | | | | | | Distribution | §415.300 |
| G | | | **Determination of Manifest Dangerousness** | | | | | | G | | **Determination of Manifest Dangerousness** | |
| | | §415.301 | Purpose | | | | | | | | Purpose | §415.301 |
| | | §415.302 | Application | | | | | | | | Application | §415.302 |
| | | §415.303 | Definitions | | | | | | | | Definitions | §415.303 |
| | | §415.304 | Persons Who May and May Not Be Subject to a Hearing to Determine Manifest Dangerousness | | | | | | | | Persons Who May and May Not Be Subject to a Hearing to Determine Manifest Dangerousness | §415.304 |
| | | §415.305 | Procedures and Requirements for All Review Boards | | | | | | | | Procedures and Requirements for All Review Boards | §415.305 |
| | | §415.306 | Rights of the Individual | | | | | | | | Rights of the Individual | §415.306 |
| | | §415.307 | Procedures and Requirements Specific to a Facility Review Board | | | | | | | | Procedures and Requirements Specific to a Facility Review Board | §415.307 |
| | | §415.308 | Transferring an Individual to the MSU/SAU | | | | | | | | Transferring an Individual to the MSU/SAU | §415.308 |
| | | §415.309 | Appeal of a Facility Review Board's Determination of Manifest Dangerousness | | | | | | | | Appeal of a Facility Review Board's Determination of Manifest Dangerousness | §415.309 |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §415.310 | Procedures and Requirements Specific to the TDMHMR Review Board | | | | | | | Procedures and Requirements Specific to the TDMHMR Review Board | §415.310 |
| | | §415.311 | Disagreement with TDMHMR Review Board Determination and Referral to Commissioner | | | | | | | Disagreement with TDMHMR Review Board Determination and Referral to Commissioner | §415.311 |
| | | §415.312 | Transferring an Individual from the MSU/SAU | | | | | | | Transferring an Individual from the MSU/SAU | §415.312 |
| | | §415.313 | Competency of Review Board Members | | | | | | | Competency of Review Board Members | §415.313 |
| | | §415.314 | Exhibits | | | | | | | Exhibits | §415.314 |
| | | §415.315 | References | | | | | | | References | §415.315 |
| | | §415.316 | Distribution | | | | | | | Distribution | §415.316 |
| H | | | **Use of Restraint in State Mental Retardation Facilities** | H | | **Use of Restraint in State Mental Retardation Facilities** | | | | | |
| | | §415.351 | Purpose | | | Purpose | §5.351 | | | | |
| | | §415.352 | Application | | | Application | §5.352 | | | | |
| | | §415.353 | Definitions | | | Definitions | §5.353 | | | | |
| | | §415.354 | General Provisions | | | General Provisions | §5.354 | | | | |
| | | §415.355 | General Principles for the Use of Restraint | | | General Principles for the Use of Restraint | §5.355 | | | | |
| | | §415.356 | Use of Restraint in a Behavioral Emergency | | | Use of Restraint in a Behavioral Emergency | §5.356 | | | | |
| | | §415.357 | Use of Restraint in a Behavior Therapy Program | | | Use of Restraint in a Behavior Therapy Program | §5.357 | | | | |
| | | §415.358 | Use of Restraint During Medical or Dental Procedures and To Promote Healing | | | Use of Restraint During Medical or Dental Procedures and To Promote Healing | §5.358 | | | | |
| | | §415.359 | Use of Restraint with a Mechanical Device to Prevent Involuntary Self-injury | | | Use of Restraint with a Mechanical Device to Prevent Involuntary Self-injury | §5.359 | | | | |
| | | §415.360 | Use of Restraint with a Mechanical Device to Provide Postural Support | | | Use of Restraint with a Mechanical Device to Provide Postural Support | §5.360 | | | | |
| | | §415.361 | Mechanical Devices for Use in Restraint | | | Mechanical Devices for Use in Restraint | §5.361 | | | | |
| | | §415.362 | Additional Reporting and Documentation Requirements | | | Additional Reporting and Documentation Requirements | §5.362 | | | | |
| | | §415.363 | Staff Training in the Use of Restraint | | | Staff Training in the Use of Restraint | §5.363 | | | | |
| | | §415.364 | Enforcement | | | Enforcement | §5.364 | | | | |
| | | §415.365 | References | | | References | §5.365 | | | | |
| | | §415.366 | Distribution | | | Distribution | §5.366 | | | | |
| I | | | **Behavior Therapy in State Mental Retardation Facilities** | I | | **Behavior Therapy in State Mental Retardation Facilities** | | | | | |
| | | §415.401 | Purpose | | | Purpose | §5.401 | | | | |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §415.402 | Application | | | Application | §5.402 | | | | |
| | | §415.403 | Definitions | | | Definitions | §5.403 | | | | |
| | | §415.404 | General Provisions | | | General Provisions | §5.404 | | | | |
| | | §415.405 | General Principles for Behavior Therapy Programs | | | General Principles for Behavior Therapy Programs | §5.405 | | | | |
| | | §415.406 | Development, Implementation, and Monitoring of Effectiveness of Behavior Therapy Programs | | | Development, Implementation, and Monitoring of Effectiveness of Behavior Therapy Programs | §5.406 | | | | |
| | | §415.407 | Requirement to Obtain Legally Adequate Consent, Consent, or Authorization | | | Requirement to Obtain Legally Adequate Consent, Consent, or Authorization | §5.407 | | | | |
| | | §415.408 | Use of Restraint | | | Use of Restraint | §5.408 | | | | |
| | | §415.409 | Documenting and Reporting Behavior Therapy Programs That Use Highly Restrictive Procedures | | | Documenting and Reporting Behavior Therapy Programs That Use Highly Restrictive Procedures | §5.409 | | | | |
| | | §415.410 | Staff Training in Behavior Therapy | | | Staff Training in Behavior Therapy | §5.410 | | | | |
| | | §415.411 | References | | | References | §5.411 | | | | |
| | | §415.412 | Distribution | | | Distribution | §5.412 | | | | |
| **J** | | | **Preadmission Screening and Resident Review (PASARR)** | **J** | | **Preadmission Screening and Resident Review (PASARR)--Mental Retardation Services** | | **J** | | **Preadmission Screening and Resident Review (PASARR)--Mental Health Services** | |
| | | §415.451 | Purpose | | | Purpose | §5.451 | | | Purpose | §415.451 |
| | | §415.452 | Application | | | Application | §5.452 | | | Application | §415.452 |
| | | §415.453 | Definitions | | | Definitions | §5.453 | | | Definitions | §415.453 |
| | | §415.454 | PASARR Determination Process | | | PASARR Determination Process | §5.454 | | | PASARR Determination Process | §415.454 |
| | | §415.455 | Provision of Specialized Services and Alternate Placement Services | | | Provision of Specialized Services and Alternate Placement Services | §5.455 | | | Provision of Specialized Services and Alternate Placement Services | §415.455 |
| | | §415.456 | Assistance for Applicants Denied Nursing Facility Admission | | | Assistance for Applicants Denied Nursing Facility Admission | §5.456 | | | Assistance for Applicants Denied Nursing Facility Admission | §415.456 |
| | | §415.457 | References | | | References | §5.457 | | | References | §415.457 |
| | | §415.458 | Distribution | | | Distribution | §5.458 | | | Distribution | §415.458 |

| Chapter 417. Agency and Facility Responsibilities | | | | Chapter 7. TDMHMR and Facility Responsibilities | | | | Chapter 417. TDMHMR and Facility Responsibilities | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Subch. & Division | | Section | Heading | Subch. & Division | | Heading | Section | Subch. & Division | | Heading | Section |
| **A** | | | **Standard Operating Procedures** | **A** | | **Standard Operating Procedures** | | **A** | | **Standard Operating Procedures** | |
| | | §417.1 | Purpose | | | Purpose | §7.1 | | | Purpose | §417.1 |
| | | §417.2 | Application | | | Application | §7.2 | | | Application | §417.2 |
| | | §417.3 | Compliance with Nondiscrimination Laws | | | Compliance with Nondiscrimination Laws | §7.3 | | | Compliance with Nondiscrimination Laws | §417.3 |
| | | §417.4 | Definitions | | | Definitions | §7.4 | | | Definitions | §417.4 |
| | | §417.6 | Assignment and Use of Pooled Vehicles | | | Assignment and Use of Pooled Vehicles | §7.6 | | | Assignment and Use of Pooled Vehicles | §417.6 |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §417.7 | Inscription on State Vehicles | | | Inscription on State Vehicles | §7.7 | | | Inscription on State Vehicles | §417.7 |
| | | §417.9 | Material Safety Data Sheets | | | Material Safety Data Sheets | §7.9 | | | Material Safety Data Sheets | §417.9 |
| | | §417.14 | Non-Commercial Groups | | | Non-Commercial Groups | §7.14 | | | Non-Commercial Groups | §417.14 |
| | | §417.15 | Family Members and Guests of an Individual Receiving Services | | | Family Members and Guests of an Individual Receiving Services | §7.15 | | | Family Members and Guests of an Individual Receiving Services | §417.15 |
| | | §417.23 | Unauthorized Departures That May Have Unusual Consequences | | | Unauthorized Departures That May Have Unusual Consequences | §7.23 | | | Unauthorized Departures That May Have Unusual Consequences | §417.23 |
| | | §417.27 | Depositing Department Funds | | | Depositing Department Funds | §7.27 | | | Depositing Department Funds | §417.27 |
| | | §417.28 | Investing Department Funds | | | Investing Department Funds | §7.28 | | | Investing Department Funds | §417.28 |
| | | §417.29 | Benefit Funds: Use and Control | | | Benefit Funds: Use and Control | §7.29 | | | Benefit Funds: Use and Control | §417.29 |
| | | §417.33 | Mail for Staff Residing On Campus | | | Mail for Staff Residing On Campus | §7.33 | | | Mail for Staff Residing On Campus | §417.33 |
| | | §417.34 | Commercial Solicitation on Grounds | | | Commercial Solicitation on Grounds | §7.34 | | | Commercial Solicitation on Grounds | §417.34 |
| | | §417.38 | Individual's Personal Property | | | Individual's Personal Property | §7.38 | | | Individual's Personal Property | §417.38 |
| | | §417.39 | Protecting an Individual's Personal Funds | | | | | | | Protecting an Individual's Personal Funds | §417.39 |
| | | §417.40 | Notice Regarding Personal Funds | | | | | | | Notice Regarding Personal Funds | §417.40 |
| | | §417.41 | Determining Management of Personal Funds | | | | | | | Determining Management of Personal Funds | §417.41 |
| | | §417.42 | SMHF-Managed Personal Funds | | | | | | | SMHF-Managed Personal Funds | §417.42 |
| | | §417.43 | Requests for Personal Funds from Trust Fund Accounts | | | | | | | Requests for Personal Funds from Trust Fund Accounts | §417.43 |
| | | §417.44 | Returning Individual's Personal Funds on Discharge | | | | | | | Returning Individual's Personal Funds on Discharge | §417.44 |
| | | §417.45 | Unclaimed Personal Funds and Property | | | | | | | Unclaimed Personal Funds and Property | §417.45 |
| | | §417.46 | Contributions | | | | | | | Contributions | §417.46 |
| | | §417.49 | References | | | | | | | References | §417.49 |
| | | §417.50 | Distribution | | | | | | | Distribution | §417.50 |
| **B** | | | **Contracts Management for TDMHMR Facilities and Central Office** | **B** | | **Contracts Management for TDMHMR Facilities and Central Office** | | **B** | | **Contracts Management for TDMHMR Facilities and Central Office** | |
| | | §417.51 | Purpose | | | Purpose | §7.51 | | | Purpose | §417.51 |
| | | §417.52 | Application | | | Application | §7.52 | | | Application | §417.52 |
| | | §417.53 | Definitions | | | Definitions | §7.53 | | | Definitions | §417.53 |
| | | §417.54 | Procurement | | | Procurement | §7.54 | | | Procurement | §417.54 |
| | | §417.55 | Accountability | | | Accountability | §7.55 | | | Accountability | §417.55 |
| | | §417.56 | Provisions for All Contracts | | | Provisions for All Contracts | §7.56 | | | Provisions for All Contracts | §417.56 |
| | | §417.57 | Additional Requirements for Specific Contracts | | | Additional Requirements for Specific Contracts | §7.57 | | | Additional Requirements for Specific Contracts | §417.57 |
| | | §417.58 | Contract Extension or Renewal | | | Contract Extension or Renewal | §7.58 | | | Contract Extension or Renewal | §417.58 |
| | | §417.59 | Award of Construction Contracts | | | Award of Construction Contracts | §7.59 | | | Award of Construction Contracts | §417.59 |
| | | §417.60 | Protest and Appeal Procedures | | | Protest and Appeal Procedures | §7.60 | | | Protest and Appeal Procedures | §417.60 |
| | | §417.61 | Contract Monitoring | | | Contract Monitoring | §7.61 | | | Contract Monitoring | §417.61 |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §417.62 | Remedies and Sanctions for All Contracts Except Construction Contracts | | | Remedies and Sanctions for All Contracts Except Construction Contracts | §7.62 | | | Remedies and Sanctions for All Contracts Except Construction Contracts | §417.62 |
| | | §417.63 | Negotiation and Mediation | | | Negotiation and Mediation | §7.63 | | | Negotiation and Mediation | §417.63 |
| | | §417.64 | References | | | References | §7.64 | | | References | §417.64 |
| | | §417.65 | Distribution | | | Distribution | §7.65 | | | Distribution | §417.65 |
| C | | | **Charges for Services in TDMHMR Facilities** | C | | **Charges for Services in TDMHMR Facilities** | | C | | **Charges for Services in TDMHMR Facilities** | |
| | | §417.101 | Purpose | | | Purpose | §7.101 | | | Purpose | §417.101 |
| | | §417.102 | Application | | | Application | §7.102 | | | Application | §417.102 |
| | | §417.103 | Definitions | | | Definitions | §7.103 | | | Definitions | §417.103 |
| | | §417.104 | Fee Assessment and Notification of Charges | | | Fee Assessment and Notification of Charges | §7.104 | | | Fee Assessment and Notification of Charges | §417.104 |
| | | §417.105 | Accruing Charges | | | Accruing Charges | §7.105 | | | Accruing Charges | §417.105 |
| | | §417.106 | Appeal Process | | | Appeal Process | §7.106 | | | Appeal Process | §417.106 |
| | | §417.107 | Filing Notice of Lien | | | Filing Notice of Lien | §7.107 | | | Filing Notice of Lien | §417.107 |
| | | §417.108 | Exhibits | | | Exhibits | §7.108 | | | Exhibits | §417.108 |
| | | §417.109 | References | | | References | §7.109 | | | References | §417.109 |
| | | §417.110 | Distribution | | | Distribution | §7.110 | | | Distribution | §417.110 |
| D | | | **Permanent Improvements Donated by Individuals or Community Groups** | D | | **Permanent Improvements Donated by Individuals or Community Groups** | | D | | **Permanent Improvements Donated by Individuals or Community Groups** | |
| | | §417.151 | Purpose | | | Purpose | §7.151 | | | Purpose | §417.151 |
| | | §417.152 | Application | | | Application | §7.152 | | | Application | §417.152 |
| | | §417.153 | Definitions | | | Definitions | §7.153 | | | Definitions | §417.153 |
| | | §417.154 | Permanent Improvement Process | | | Permanent Improvement Process | §7.154 | | | Permanent Improvement Process | §417.154 |
| | | §417.155 | Permanent Improvement Approval | | | Permanent Improvement Approval | §7.155 | | | Permanent Improvement Approval | §417.155 |
| | | §417.156 | Responsibilities of the VSC Board, VSC Chair, and PI Committee | | | Responsibilities of the VSC Board, VSC Chair, and PI Committee | §7.156 | | | Responsibilities of the VSC Board, VSC Chair, and PI Committee | §417.156 |
| | | §417.157 | Dedicated Construction Account Requirements | | | Dedicated Construction Account Requirements | §7.157 | | | Dedicated Construction Account Requirements | §417.157 |
| | | §417.158 | Accepting an Improvement | | | Accepting an Improvement | §7.158 | | | Accepting an Improvement | §417.158 |
| | | §417.159 | References | | | References | §7.159 | | | References | §417.159 |
| | | §417.160 | Distribution | | | Distribution | §7.160 | | | Distribution | §417.160 |
| G | | | **Community Relations** | G | | **Community Relations** | | G | | **Community Relations** | |
| | | §417.301 | Purpose | | | Purpose | §7.301 | | | Purpose | §417.301 |
| | | §417.302 | Application | | | Application | §7.302 | | | Application | §417.302 |
| | | §417.303 | Definitions | | | Definitions | §7.303 | | | Definitions | §417.303 |
| | | §417.304 | Volunteer Programs | | | Volunteer Programs | §7.304 | | | Volunteer Programs | §417.304 |
| | | §417.305 | Volunteer Program Procedures | | | Volunteer Program Procedures | §7.305 | | | Volunteer Program Procedures | §417.305 |
| | | §417.306 | TDMHMR Awards and Recognition of Volunteers and Visiting Group | | | TDMHMR Awards and Recognition of Volunteers and Visiting Group | §7.306 | | | TDMHMR Awards and Recognition of Volunteers and Visiting Group | §417.306 |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §417.307 | Volunteer Services Council (VSC) | | | Volunteer Services Council (VSC) | §7.307 | | | Volunteer Services Council (VSC) | §417.307 |
| | | §417.308 | Fundraising and Solicitation | | | Fundraising and Solicitation | §7.308 | | | Fundraising and Solicitation | §417.308 |
| | | §417.309 | Donations | | | Donations | §7.309 | | | Donations | §417.309 |
| | | §417.310 | Naming of Donations | | | Naming of Donations | §7.310 | | | Naming of Donations | §417.310 |
| | | §417.311 | Volunteer Services State Council (VSSC) | | | Volunteer Services State Council (VSSC) | §7.311 | | | Volunteer Services State Council (VSSC) | §417.311 |
| | | §417.313 | Auditing and Reporting Guidelines | | | Auditing and Reporting Guidelines | §7.313 | | | Auditing and Reporting Guidelines | §417.313 |
| | | §417.314 | Exhibits | | | Exhibits | §7.314 | | | Exhibits | §417.314 |
| | | §417.315 | References | | | References | §7.315 | | | References | §417.315 |
| | | §417.316 | Distribution | | | Distribution | §7.316 | | | Distribution | §417.316 |
| **K** | | | **Abuse, Neglect, and Exploitation in TDMHMR Facilities** | **K** | | **Abuse, Neglect, and Exploitation in TDMHMR Facilities** | | **K** | | **Abuse, Neglect, and Exploitation in TDMHMR Facilities** | |
| | | §417.501 | Purpose | | | Purpose | §7.501 | | | Purpose | §417.501 |
| | | §417.502 | Application | | | Application | §7.502 | | | Application | §417.502 |
| | | §417.503 | Definitions | | | Definitions | §7.503 | | | Definitions | §417.503 |
| | | §417.504 | Prohibition and Definitions of Abuse, Neglect, and Exploitation | | | Prohibition and Definitions of Abuse, Neglect, and Exploitation | §7.504 | | | Prohibition and Definitions of Abuse, Neglect, and Exploitation | §417.504 |
| | | §417.505 | Reporting Responsibilities of All TDMHMR Employees, Agents, and Contractors: Reports to Texas Department of Protective and Regulatory Services (TDPRS) | | | Reporting Responsibilities of All TDMHMR Employees, Agents, and Contractors: Reports to Texas Department of Protective and Regulatory Services (TDPRS) | §7.505 | | | Reporting Responsibilities of All TDMHMR Employees, Agents, and Contractors: Reports to Texas Department of Protective and Regulatory Services (TDPRS) | §417.505 |
| | | §417.507 | Prohibition Against Retaliatory Action | | | Prohibition Against Retaliatory Action | §7.507 | | | Prohibition Against Retaliatory Action | §417.507 |
| | | §417.508 | Responsibilities of the Head of the Facility | | | Responsibilities of the Head of the Facility | §7.508 | | | Responsibilities of the Head of the Facility | §417.508 |
| | | §417.509 | Peer Review | | | Peer Review | §7.509 | | | Peer Review | §417.509 |
| | | §417.510 | Completion of the Investigation | | | Completion of the Investigation | §7.510 | | | Completion of the Investigation | §417.510 |
| | | §417.511 | Confidentiality of Investigative Process and Report | | | Confidentiality of Investigative Process and Report | §7.511 | | | Confidentiality of Investigative Process and Report | §417.511 |
| | | §417.512 | Classifications and Disciplinary Actions | | | Classifications and Disciplinary Actions | §7.512 | | | Classifications and Disciplinary Actions | §417.512 |
| | | §417.513 | Contractors | | | Contractors | §7.513 | | | Contractors | §417.513 |
| | | §417.514 | TDMHMR Administrative Responsibilities | | | TDMHMR Administrative Responsibilities | §7.514 | | | TDMHMR Administrative Responsibilities | §417.514 |
| | | §417.515 | Staff Training in Identifying, Reporting, and Preventing Abuse, Neglect, and Exploitation | | | Staff Training in Identifying, Reporting, and Preventing Abuse, Neglect, and Exploitation | §7.515 | | | Staff Training in Identifying, Reporting, and Preventing Abuse, Neglect, and Exploitation | §417.515 |
| | | §417.516 | Exhibits | | | Exhibits | §7.516 | | | Exhibits | §417.516 |
| | | §417.517 | References | | | References | §7.517 | | | References | §417.517 |
| | | §417.518 | Distribution | | | Distribution | §7.518 | | | Distribution | §417.518 |

| S | | | Negotiation and Mediation of Certain Contract Claims Against TDMHMR | S | | Negotiation and Mediation of Certain Contract Claims Against TDMHMR | | S | | Negotiation and Mediation of Certain Contract Claims Against TDMHMR | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | | **General** | | 1 | **General** | | | 1 | **General** | |
| | | §417.901 | Purpose | | | Purpose | §7.901 | | | Purpose | §417.901 |
| | | §417.902 | Applicability | | | Applicability | §7.902 | | | Applicability | §417.902 |
| | | §417.903 | Definitions | | | Definitions | §7.903 | | | Definitions | §417.903 |
| | | §417.904 | Prerequisites to Suit | | | Prerequisites to Suit | §7.904 | | | Prerequisites to Suit | §417.904 |
| | | §417.905 | Sovereign Immunity | | | Sovereign Immunity | §7.905 | | | Sovereign Immunity | §417.905 |
| | 2 | | **Negotiation** | | 2 | **Negotiation** | | | 2 | **Negotiation** | |
| | | §417.906 | Notice of Claim of Breach of Contract | | | Notice of Claim of Breach of Contract | §7.906 | | | Notice of Claim of Breach of Contract | §417.906 |
| | | §417.907 | Agency Counterclaim | | | Agency Counterclaim | §7.907 | | | Agency Counterclaim | §417.907 |
| | | §417.908 | Request for Voluntary Disclosure of Additional Information | | | Request for Voluntary Disclosure of Additional Information | §7.908 | | | Request for Voluntary Disclosure of Additional Information | §417.908 |
| | | §417.909 | Duty to Negotiate | | | Duty to Negotiate | §7.909 | | | Duty to Negotiate | §417.909 |
| | | §417.910 | Timetable | | | Timetable | §7.910 | | | Timetable | §417.910 |
| | | §417.911 | Conduct of Negotiation | | | Conduct of Negotiation | §7.911 | | | Conduct of Negotiation | §417.911 |
| | | §417.912 | Settlement Approval Procedures | | | Settlement Approval Procedures | §7.912 | | | Settlement Approval Procedures | §417.912 |
| | | §417.913 | Settlement Agreement | | | Settlement Agreement | §7.913 | | | Settlement Agreement | §417.913 |
| | | §417.914 | Costs of Negotiation | | | Costs of Negotiation | §7.914 | | | Costs of Negotiation | §417.914 |
| | | §417.915 | Request for Contested Case Hearing | | | Request for Contested Case Hearing | §7.915 | | | Request for Contested Case Hearing | §417.915 |
| | 3 | | **Mediation** | | 3 | **Mediation** | | | 3 | **Mediation** | |
| | | §417.916 | Mediation Timetable | | | Mediation Timetable | §7.916 | | | Mediation Timetable | §417.916 |
| | | §417.917 | Conduct of Mediation | | | Conduct of Mediation | §7.917 | | | Conduct of Mediation | §417.917 |
| | | §417.918 | Agreement to Mediate | | | Agreement to Mediate | §7.918 | | | Agreement to Mediate | §417.918 |
| | | §417.919 | Qualifications and Immunity of the Mediator | | | Qualifications and Immunity of the Mediator | §7.919 | | | Qualifications and Immunity of the Mediator | §417.919 |
| | | §417.920 | Confidentiality of Mediation and Final Settlement Agreement | | | Confidentiality of Mediation and Final Settlement Agreement | §7.920 | | | Confidentiality of Mediation and Final Settlement Agreement | §417.920 |
| | | §417.921 | Costs of Mediation | | | Costs of Mediation | §7.921 | | | Costs of Mediation | §417.921 |
| | | §417.922 | Settlement Approval Procedures | | | Settlement Approval Procedures | §7.922 | | | Settlement Approval Procedures | §417.922 |
| | | §417.923 | Initial Settlement Agreement | | | Initial Settlement Agreement | §7.923 | | | Initial Settlement Agreement | §417.923 |
| | | §417.924 | Final Settlement Agreement | | | Final Settlement Agreement | §7.924 | | | Final Settlement Agreement | §417.924 |
| | | §417.925 | Referral to the State Office of Administrative Hearings | | | Referral to the State Office of Administrative Hearings | §7.925 | | | Referral to the State Office of Administrative Hearings | §417.925 |

| Chapter 419. Medicaid State Operating Agency Responsibilities | | | | Chapter 9. Mental Retardation Services--Medicaid State Operating Agency Responsibilities | | | | Chapter 419. Mental Health Services--Medicaid State Operating Agency Responsibilities | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Subch. & Division | | Section | Heading | Subch. & Division | | Heading | Section | Subch. & Division | | Heading | Section |
| D | | | Home and Community-based Services (HCS) Program | D | | Home and Community-based Services (HCS) Program | | | | | |
| | | §419.151 | Purpose | | | Purpose | §9.151 | | | | |
| | | §419.152 | Application | | | Application | §9.152 | | | | |
| | | §419.153 | Definitions | | | Definitions | §9.153 | | | | |
| | | §419.154 | Description of the Home and Community-Based Services (HCS) Program | | | Description of the Home and Community-Based Services (HCS) Program | §9.154 | | | | |
| | | §419.155 | Eligibility Criteria | | | Eligibility Criteria | §9.155 | | | | |
| | | §419.156 | Calculation of Co-payment | | | Calculation of Co-payment | §9.156 | | | | |
| | | §419.157 | Individual Plan of Care | | | Individual Plan of Care | §9.157 | | | | |
| | | §419.158 | Department Review of Individual Plan of Care (IPC) | | | Department Review of Individual Plan of Care (IPC) | §9.158 | | | | |
| | | §419.159 | Level of Care (LOC) Determination | | | Level of Care (LOC) Determination | §9.159 | | | | |
| | | §419.160 | Lapsed Level of Care (LOC) | | | Lapsed Level of Care (LOC) | §9.160 | | | | |
| | | §419.161 | Level of Need Assignment | | | Level of Need Assignment | §9.161 | | | | |
| | | §419.162 | Department Review of Level of Need (LON) | | | Department Review of Level of Need (LON) | §9.162 | | | | |
| | | §419.163 | Reconsideration of Level of Need Assignment | | | Reconsideration of Level of Need Assignment | §9.163 | | | | |
| | | §419.164 | Process for Enrollment of Applicants | | | Process for Enrollment of Applicants | §9.164 | | | | |
| | | §419.165 | Maintenance of HCS Program Waiting List | | | Maintenance of HCS Program Waiting List | §9.165 | | | | |
| | | §419.166 | Revisions and Renewals of Individual Plans of Care (IPCs), Levels of Care (LOCs) and Levels of Need (LONs) for Enrolled Individuals | | | Revisions and Renewals of Individual Plans of Care (IPCs), Levels of Care (LOCs) and Levels of Need (LONs) for Enrolled Individuals | §9.166 | | | | |
| | | §419.169 | Fair Hearing | | | Fair Hearing | §9.169 | | | | |
| | | §419.170 | Provider Reimbursement | | | Provider Reimbursement | §9.170 | | | | |
| | | §419.171 | Program Provider Certification and Review | | | Program Provider Certification and Review | §9.171 | | | | |
| | | §419.172 | Certification Principles: Mission, Development, and Philosophy of Program Operations | | | Certification Principles: Mission, Development, and Philosophy of Program Operations | §9.172 | | | | |
| | | §419.173 | Certification Principles: Rights of Individuals | | | Certification Principles: Rights of Individuals | §9.173 | | | | |
| | | §419.174 | Certification Principles: Service Delivery | | | Certification Principles: Service Delivery | §9.174 | | | | |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §419.175 | Certification Principles: Interdisciplinary Team Operations | | | Certification Principles: Interdisciplinary Team Operations | §9.175 | | | | |
| | | 419.176 | Certification Principles: Discharge from Services | | | Certification Principles: Discharge from Services | §9.176 | | | | |
| | | §419.177 | Certification Principles: Personnel Operations | | | Certification Principles: Personnel Operations | §9.177 | | | | |
| | | §419.178 | Certification Principles: Quality Assurance | | | Certification Principles: Quality Assurance | §9.178 | | | | |
| | | §419.179 | Corrective Action and Program Provider Sanctions | | | Corrective Action and Program Provider Sanctions | §9.179 | | | | |
| | | §419.180 | Program Provider's Right to Administrative Hearing | | | Program Provider's Right to Administrative Hearing | §9.180 | | | | |
| | | §419.181 | Other Provider Responsibilities | | | Other Provider Responsibilities | §9.181 | | | | |
| | | §419.182 | Department Approval of Residences | | | Department Approval of Residences | §9.182 | | | | |
| **E** | | | **ICF/MR Programs** | **E** | | **ICF/MR Programs--Contracting** | | | | | |
| | **1** | | **General Requirements** | | **1** | **General Requirements** | | | | | |
| | | §419.201 | Purpose | | | Purpose | §9.201 | | | | |
| | | §419.202 | Application | | | Application | §9.202 | | | | |
| | | §419.203 | Definitions | | | Definitions | §9.203 | | | | |
| | **2** | | **Provider Enrollment** | | **2** | **Provider Enrollment** | | | | | |
| | | §419.206 | Application Process | | | Application Process | §9.206 | | | | |
| | | §419.207 | Certification and Licensure | | | Certification and Licensure | §9.207 | | | | |
| | | §419.208 | Provider Agreement | | | Provider Agreement | §9.208 | | | | |
| | **3** | | **Provider Administrative Requirements** | | **3** | **Provider Administrative Requirements** | | | | | |
| | | §419.211 | Compliance with State and Federal Laws | | | Compliance with State and Federal Laws | §9.211 | | | | |
| | | §419.212 | Non-licensed Providers Meeting Licensure Standards | | | Non-licensed Providers Meeting Licensure Standards | §9.212 | | | | |
| | | §419.213 | Records | | | Records | §9.213 | | | | |
| | | §419.214 | Certified Capacity of a Facility | | | Certified Capacity of a Facility | §9.214 | | | | |
| | | §419.215 | Relocation of Facility | | | Relocation of Facility | §9.215 | | | | |
| | | §419.216 | Renewal of Provider Agreement | | | Renewal of Provider Agreement | §9.216 | | | | |
| | | §419.217 | Assignment of Provider Agreement | | | Assignment of Provider Agreement | §9.217 | | | | |
| | | §419.218 | Licensure Action and Facility Closure | | | Licensure Action and Facility Closure | §9.218 | | | | |
| | | §419.219 | Provider Reimbursement | | | Provider Reimbursement | §9.219 | | | | |
| | **4** | | **Provider Service Requirements** | | **4** | **Provider Service Requirements** | | | | | |
| | | §419.221 | Durable Medical Equipment | | | Durable Medical Equipment | §9.221 | | | | |
| | | §419.222 | Permanency Planning for Children | | | Permanency Planning for Children | §9.222 | | | | |
| | | §419.223 | Review of Living Options | | | Review of Living Options | §9.223 | | | | |
| | | §419.224 | Capacity Assessment | | | Capacity Assessment | §9.224 | | | | |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §419.225 | Reporting Abuse, Neglect, and Injuries of Unknown Source | | | Reporting Abuse, Neglect, and Injuries of Unknown Source | §9.225 | | | | |
| | | §419.226 | Leaves | | | Leaves | §9.226 | | | | |
| | | §419.227 | Discharge From a Facility | | | Discharge From a Facility | §9.227 | | | | |
| | 5 | | **Eligibility, Enrollment and Review** | | 5 | **Eligibility, Enrollment and Review** | | | | | |
| | | §419.236 | Eligibility Criteria | | | Eligibility Criteria | §9.236 | | | | |
| | | §419.237 | Level of Care | | | Level of Care | §9.237 | | | | |
| | | §419.238 | Level of Care I Criteria | | | Level of Care I Criteria | §9.238 | | | | |
| | | §419.239 | ICF/MR Level of Care VIII Criteria | | | ICF/MR Level of Care VIII Criteria | §9.239 | | | | |
| | | §419.240 | Level of Need | | | Level of Need | §9.240 | | | | |
| | | §419.241 | Level of Need Criteria | | | Level of Need Criteria | §9.241 | | | | |
| | | §419.242 | Supporting Documentation for Level of Need | | | Supporting Documentation for Level of Need | §9.242 | | | | |
| | | §419.243 | Reconsideration of Level of Need | | | Reconsideration of Level of Need | §9.243 | | | | |
| | | §419.244 | Applicant Enrollment | | | Applicant Enrollment | §9.244 | | | | |
| | | §419.245 | Renewal of Level of Care | | | Renewal of Level of Care | §9.245 | | | | |
| | | §419.246 | Renewal and Revision of Level of Need | | | Renewal and Revision of Level of Need | §9.246 | | | | |
| | | §419.247 | Re-administration of the ICAP | | | Re-administration of the ICAP | §9.247 | | | | |
| | | §419.248 | Lapsed Level of Care | | | Lapsed Level of Care | §9.248 | | | | |
| | | §419.249 | Fair Hearing | | | Fair Hearing | §9.249 | | | | |
| | 6 | | **Personal Funds** | | 6 | **Personal Funds** | | | | | |
| | | §419.251 | Protecting Individuals' Personal Funds | | | Protecting Individuals' Personal Funds | §9.251 | | | | |
| | | §419.252 | Notice Regarding Personal Funds | | | Notice Regarding Personal Funds | §9.252 | | | | |
| | | §419.253 | Determining Management of Personal Funds | | | Determining Management of Personal Funds | §9.253 | | | | |
| | | §419.254 | Items and Services Provided by the Program Provider | | | Items and Services Provided by the Program Provider | §9.254 | | | | |
| | | §419.255 | Items and Services Purchased with Personal Funds | | | Items and Services Purchased with Personal Funds | §9.255 | | | | |
| | | §419.256 | Program Provider-Managed Personal Funds | | | Program Provider-Managed Personal Funds | §9.256 | | | | |
| | | §419.257 | Requests for Personal Funds from Trust Fund Accounts | | | Requests for Personal Funds from Trust Fund Accounts | §9.257 | | | | |
| | | §419.258 | Closing Trust Fund Accounts | | | Closing Trust Fund Accounts | §9.258 | | | | |
| | | §419.259 | Refunds | | | Refunds | §9.259 | | | | |
| | | §419.260 | Applied Income | | | Applied Income | §9.260 | | | | |
| | | §419.261 | Contributions | | | Contributions | §9.261 | | | | |
| | 7 | | **Provider Agreement Sanctions** | | 7 | **Provider Agreement Sanctions** | | | | | |
| | | §419.266 | Department Review of State Survey Agency Findings | | | Department Review of State Survey Agency Findings | §9.266 | | | | |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §419.267 | Directed Plan of Correction and Vendor Hold Based on State Survey Agency Findings | | | Directed Plan of Correction and Vendor Hold Based on State Survey Agency Findings | §9.267 | | | | |
| | | §419.268 | Termination of Provider Agreement | | | Termination of Provider Agreement | §9.268 | | | | |
| | | §419.269 | Audits | | | Audits | §9.269 | | | | |
| | 8 | | **Administrative Hearings** | | 8 | **Administrative Hearings** | | | | | |
| | | §419.273 | Administrative Hearings | | | Administrative Hearings | §9.273 | | | | |
| | 9 | | **Hospice Services** | | 9 | **Hospice Services** | | | | | |
| | | §419.274 | Hospice Services | | | Hospice Services | §9.274 | | | | |
| | 11 | | **References and Distribution** | | 11 | **References and Distribution** | | | | | |
| | | §419.299 | References | | | References | §9.299 | | | | |
| | | §419.300 | Distribution | | | Distribution | §9.300 | | | | |
| G | | | **Medicaid Fair Hearings** | G | | **Medicaid Fair Hearings** | | G | | **Medicaid Fair Hearings** | |
| | | §419.301 | Medicaid Fair Hearings | | | Medicaid Fair Hearings | §9.301 | | | Medicaid Fair Hearings | §419.301 |
| J | | | **Institutions for Mental Diseases** | | | | | J | | **Institutions for Mental Diseases** | |
| | | §419.371 | Purpose | | | | | | | Purpose | §419.371 |
| | | §419.372 | Application | | | | | | | Application | §419.372 |
| | | §419.373 | Definitions | | | | | | | Definitions | §419.373 |
| | | §419.374 | Eligible Population | | | | | | | Eligible Population | §419.374 |
| | | §419.375 | IMD Provider Eligibility for Reimbursement | | | | | | | IMD Provider Eligibility for Reimbursement | §419.375 |
| | | §419.376 | IMD Provider Reimbursement | | | | | | | IMD Provider Reimbursement | §419.376 |
| | | §419.377 | Discharge Criteria | | | | | | | Discharge Criteria | §419.377 |
| | | §419.378 | References | | | | | | | References | §419.378 |
| | | §419.379 | Distribution | | | | | | | Distribution | §419.379 |
| L | | | **Medicaid Mental Health Rehabilitative Services** | | | | | L | | **Medicaid Mental Health Rehabilitative Services** | |
| | | §419.451 | Purpose | | | | | | | Purpose | §419.451 |
| | | §419.452 | Application | | | | | | | Application | §419.452 |
| | | §419.453 | Definitions | | | | | | | Definitions | §419.453 |
| | | §419.454 | General Requirements for Providers of Medicaid MH Rehabilitative Services | | | | | | | General Requirements for Providers of Medicaid MH Rehabilitative Services | §419.454 |
| | | §419.455 | Eligibility | | | | | | | Eligibility | §419.455 |
| | | §419.456 | Service Authorization and Treatment Plan | | | | | | | Service Authorization and Treatment Plan | §419.456 |
| | | §419.457 | Crisis Intervention Services | | | | | | | Crisis Intervention Services | §419.457 |
| | | §419.458 | Medication Training and Support Services | | | | | | | Medication Training and Support Services | §419.458 |
| | | §419.459 | Psychosocial Rehabilitation Services | | | | | | | Psychosocial Rehabilitation Services | §419.459 |
| | | §419.460 | Rehabilitative Counseling and Psychotherapy | | | | | | | Rehabilitative Counseling and Psychotherapy | §419.460 |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §419.461 | Skills Training and Development Services | | | | | | | Skills Training and Development Services | §419.461 |
| | | §419.462 | Day Programs for Acute Needs | | | | | | | Day Programs for Acute Needs | §419.462 |
| | | §419.463 | Documentation Requirements | | | | | | | Documentation Requirements | §419.463 |
| | | §419.464 | Staff Member Training | | | | | | | Staff Member Training | §419.464 |
| | | §419.465 | Medicaid Reimbursement | | | | | | | Medicaid Reimbursement | §419.465 |
| | | §419.466 | Medicaid Provider Participation Requirements | | | | | | | Medicaid Provider Participation Requirements | §419.466 |
| | | §419.467 | Fair Hearings | | | | | | | Fair Hearings | §419.467 |
| | | §419.468 | Exhibits | | | | | | | Exhibits | §419.468 |
| | | §419.469 | References | | | | | | | References | §419.469 |
| | | §419.470 | Distribution | | | | | | | Distribution | §419.470 |
| N | | | **Texas Home Living (TxHmL) Program** | N | | **Texas Home Living (TxHmL) Program** | | | | | |
| | | §419.551 | Purpose | | | Purpose | §9.551 | | | | |
| | | §419.552 | Application | | | Application | §9.552 | | | | |
| | | §419.553 | Definitions | | | Definitions | §9.553 | | | | |
| | | §419.554 | Description of the Texas Home Living (TxHmL) Program | | | Description of the Texas Home Living (TxHmL) Program | §9.554 | | | | |
| | | §419.555 | Definitions of TxHmL Program Service Components | | | Definitions of TxHmL Program Service Components | §9.555 | | | | |
| | | §419.556 | Eligibility Criteria | | | Eligibility Criteria | §9.556 | | | | |
| | | §419.557 | Calculation of Co-payment | | | Calculation of Co-payment | §9.557 | | | | |
| | | §419.558 | Individual Plan of Care (IPC) | | | Individual Plan of Care (IPC) | §9.558 | | | | |
| | | §419.559 | Request to Increase Service Category Limits | | | Request to Increase Service Category Limits | §9.559 | | | | |
| | | §419.560 | Level of Care (LOC) Determination | | | Level of Care (LOC) Determination | §9.560 | | | | |
| | | §419.561 | Lapsed Level of Care (LOC) | | | Lapsed Level of Care (LOC) | §9.561 | | | | |
| | | §419.562 | Level of Need (LON) Assignment | | | Level of Need (LON) Assignment | §9.562 | | | | |
| | | §419.563 | Department Review of Level of Need (LON) | | | Department Review of Level of Need (LON) | §9.563 | | | | |
| | | §419.565 | Notification of Applicants Receiving General Revenue Funded Services | | | Notification of Applicants Receiving General Revenue Funded Services | §9.565 | | | | |
| | | §419.566 | Notification of Applicants Registered on Waiver Program Waiting Lists | | | Notification of Applicants Registered on Waiver Program Waiting Lists | §9.566 | | | | |
| | | §419.567 | Process for Enrollment | | | Process for Enrollment | §9.567 | | | | |
| | | §419.568 | Revisions and Renewals of Individual Plans of Care (IPCs), Levels of Care (LOCs), and Levels of Need (LONs) for Enrolled Individuals | | | Revisions and Renewals of Individual Plans of Care (IPCs), Levels of Care (LOCs), and Levels of Need (LONs) for Enrolled Individuals | §9.568 | | | | |
| | | §419.569 | Coordination of Transfers | | | Coordination of Transfers | §9.569 | | | | |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | §419.570 | Permanent Discharge from the TxHmL Program | | | Permanent Discharge from the TxHmL Program | §9.570 | | | | |
| | | §419.571 | Fair Hearings | | | Fair Hearings | §9.571 | | | | |
| | | §419.572 | Other Program Provider Requirements | | | Other Program Provider Requirements | §9.572 | | | | |
| | | §419.573 | Provider Reimbursement | | | Provider Reimbursement | §9.573 | | | | |
| | | §419.574 | Record Retention | | | Record Retention | §9.574 | | | | |
| | | §419.575 | Provider's Right to Administrative Hearing | | | Provider's Right to Administrative Hearing | §9.575 | | | | |
| | | §419.576 | Program Provider Certification and Review | | | Program Provider Certification and Review | §9.576 | | | | |
| | | §419.577 | Corrective Action and Program Provider Sanctions | | | Corrective Action and Program Provider Sanctions | §9.577 | | | | |
| | | §419.578 | Program Provider Certification Principles: Service Delivery | | | Program Provider Certification Principles: Service Delivery | §9.578 | | | | |
| | | §419.579 | Certification Principles: Qualified Personnel | | | Certification Principles: Qualified Personnel | §9.579 | | | | |
| | | §419.580 | Certification Principles: Quality Assurance | | | Certification Principles: Quality Assurance | §9.580 | | | | |
| | | §419.582 | Compliance with TxHmL Program Principles for Mental Retardation Authorities (MRAs) | | | Compliance with TxHmL Program Principles for Mental Retardation Authorities (MRAs) | §9.582 | | | | |
| | | §419.583 | TxHmL Program Principles for Mental Retardation Authorities | | | TxHmL Program Principles for Mental Retardation Authorities | §9.583 | | | | |
| | | §419.584 | References | | | References | §9.584 | | | | |
| | | §419.585 | Distribution | | | Distribution | §9.585 | | | | |
| Q | | | **Enrollment of Medicaid Waiver Program Providers** | Q | | **Enrollment of Medicaid Waiver Program Providers** | | | | | |
| | | §419.701 | Purpose | | | Purpose | §9.701 | | | | |
| | | §419.702 | Application | | | Application | §9.702 | | | | |
| | | §419.703 | Definitions | | | Definitions | §9.703 | | | | |
| | | §419.704 | Pre-application Orientation | | | Pre-application Orientation | §9.704 | | | | |
| | | §419.705 | Application Process | | | Application Process | §9.705 | | | | |
| | | §419.706 | Provisional Certification | | | Provisional Certification | §9.706 | | | | |
| | | §419.707 | Waiver Program Provider Agreement | | | Waiver Program Provider Agreement | §9.707 | | | | |
| | | §419.708 | Provider Certification | | | Provider Certification | §9.708 | | | | |
| | | §419.709 | Additional Provider Certification | | | Additional Provider Certification | §9.709 | | | | |
| | | §419.710 | Waiver Program Provider Agreement Assignment | | | Waiver Program Provider Agreement Assignment | §9.710 | | | | |
| | | §419.711 | References | | | References | §9.711 | | | | |
| | | §419.712 | Distribution | | | Distribution | §9.712 | | | | |

Figure: 25 TAC Part 16

| **Current Rules from Title 25, Part 16 Texas Health Care Information Council** | | | | **Transferred to Title 25, Part 1 Department of State Health Services** | | | |
|---|---|---|---|---|---|---|---|
| **Chapter and Subchapter** | | **Section** | **Heading** | **Chapter and Subchapter** | | **Section** | **Heading** |
| **1301** | | | **Health Care Information** | **421** | | | **Health Care Information Council** |
| | **A** | | **Collection and Release of Hospital Discharge Data** | | **A** | | **Collection and Release of Hospital Discharge Data** |
| | | §1301.11 | Definitions | | | §421.1 | Definitions |
| | | §1301.12 | Collection of Hospital Discharge Data | | | §421.2 | Collection of Hospital Discharge Data |
| | | §1301.13 | Schedule for Filing Discharge Reports | | | §421.3 | Schedule for Filing Discharge Reports |
| | | §1301.14 | Instructions for Filing Discharge Reports | | | §421.4 | Instructions for Filing Discharge Reports |
| | | §1301.15 | Exemptions from Filing Requirements | | | §421.5 | Exemptions from Filing Requirements |
| | | §1301.16 | Acceptance of Discharge Reports and Correction of Errors | | | §421.6 | Acceptance of Discharge Reports and Correction of Errors |
| | | §1301.17 | Certification of Discharge Reports | | | §421.7 | Certification of Discharge Reports |
| | | §1301.18 | Hospital Discharge Data Release | | | §421.8 | Hospital Discharge Data Release |
| | | §1301.19 | Discharge Reports--Records, Data Fields and Codes | | | §421.9 | Discharge Reports--Records, Data Fields and Codes |
| | | §1301.20 | Scientific Review Panel | | | §421.10 | Scientific Review Panel |
| | **B** | | **Collection and Reporting of Health Plan Employer Data and Information Set (HEDIS) from Health Maintenance Organizations (HMOs)** | | **B** | | **Collection and Reporting of Health Plan Employer Data and Information Set (HEDIS) from Health Maintenance Organizations (HMOs)** |
| | | §1301.31 | Purpose | | | §421.21 | Purpose |
| | | §1301.32 | Definitions | | | §421.22 | Definitions |
| | | §1301.33 | Collection and Reporting of Health Plan Employer Data and Information Set (HEDIS) Data by Health Maintenance Organizations (HMOs) | | | §421.23 | Collection and Reporting of Health Plan Employer Data and Information Set (HEDIS) Data by Health Maintenance Organizations (HMOs) |
| | | §1301.34 | Verification of Data | | | §421.24 | Verification of Data |
| | | §1301.35 | Civil Penalty | | | §421.25 | Civil Penalty |
| | **C** | | **Rules Relating to Reports Created by the Council** | | **C** | | **Rules Relating to Reports Created by the Council** |
| | | §1301.41 | Definitions | | | §421.41 | Definitions |
| | | §1301.42 | Procedures for Provider Reports | | | §421.42 | Procedures for Provider Reports |
| | | §1301.43 | Technical Documentation regarding Provider Reports | | | §421.43 | Technical Documentation regarding Provider Reports |
| | | §1301.44 | Timeline Requirements for Release of Technical Documentation and Provider Reports | | | §421.44 | Timeline Requirements for Release of Technical Documentation and Provider Reports |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | **E** | | **Collection and Release of Ambulatory Surgical Care and Emergency Department Data on Reporting Hospitals** | | **D** | | **Collection and Release of Ambulatory Surgical Care and Emergency Department Data on Reporting Hospitals** |
| | | §1301.61 | Definitions | | | §421.61 | Definitions |
| | | §1301.62 | Collection of Ambulatory Surgical Care and Emergency Department Data | | | §421.62 | Collection of Ambulatory Surgical Care and Emergency Department Data |
| | | §1301.63 | Schedule for Filing Event Files | | | §421.63 | Schedule for Filing Event Files |
| | | §1301.64 | Instructions for Filing Event Files | | | §421.64 | Instructions for Filing Event Files |
| | | §1301.65 | Acceptance of Event Files and Correction of Data Content Errors | | | §421.65 | Acceptance of Event Files and Correction of Data Content Errors |
| | | §1301.66 | Certification of Compiled Event Data | | | §421.66 | Certification of Compiled Event Data |
| | | §1301.68 | Event Files--Records, Data Fields and Codes | | | §421.67 | Event Files--Records, Data Fields and Codes |

| **Current Rules from Title 25, Part 16 Texas Health Care Information Council** | | | | **Transferred to Title 25, Part 1 Department of State Health Services** | | | |
|---|---|---|---|---|---|---|---|
| **Chapter and Subchapter** | | **Section** | **Heading** | **Chapter and Subchapter** | | **Section** | **Heading** |
| **1301** | | | **Health Care Information** | **460** | | | **Miscellaneous** |
| | **D** | | **Rules and Procedures for Council Officers, Council Employees, Donors and Donations** | | **D** | | **Rules and Procedures for Council Officers, Council Employees, Donors and Donations** |
| | | §1301.51 | Definitions | | | §460.201 | Definitions |
| | | §1301.52 | Administration and Investment of Funds | | | §460.202 | Administration and Investment of Funds |
| | | §1301.53 | Relationships | | | §460.203 | Relationships |
| | | §1301.54 | Procedure for Acceptance of Donations | | | §460.204 | Procedures for Acceptance of Donations |
| | **H** | | **Historically Underutilized Business Program** | | **E** | | **Historically Underutilized Business Program** |
| | | §1301.71 | Historically Underutilized Business (HUB) Program | | | §460.211 | Historically Underutilized Business (HUB) Program |

Figure: 40 TAC Part 3

| Current Rules from Title 40, Part 3 Texas Commission on Alcohol and Drug Abuse | | | | Transferred to Title 25, Part 1 Department of State Health Services | | | |
|---|---|---|---|---|---|---|---|
| Chapter and Subchapter | | Section | Heading | Chapter and Subchapter | | Heading | Section |
| 141 | | | **General Provisions** | 441 | | **General Provisions** | |
| | A | | **Definitions** | | A | **Definitions** | |
| | | §141.101 | Definitions | | | Definitions. | §441.101 |
| | B | | **Claims Against the Commission** | | B | **Claims Against the Commission** | |
| | | §141.201 | Notice of Claim | | | Notice of Claim. | §441.201 |
| | | §141.202 | Agency Counterclaim | | | Agency Counterclaim. | §441.202 |
| | | §141.203 | Timetable for Negotiations and Contested Case Hearings | | | Timetable for Negotiations and Contested Case Hearings. | §441.203 |
| | | §141.204 | Conduct of Negotiations | | | Conduct of Negotiations. | §441.204 |
| | | §141.205 | Mediation | | | Mediation. | §441.205 |
| | D | | **Measuring the Effectiveness of the State's Substance Abuse Prevention Services** | | D | **Measuring the Effectiveness of the State's Substance Abuse Prevention Services** | |
| | | §141.401 | Interagency Agreement | | | Interagency Agreement. | §441.401 |
| 141 | | | **General Provisions** | 460 | | **Miscellaneous** | |
| | C | | **Procurement** | | B | **Procurement** | |
| | | §141.301 | Procurement | | | Procurement. | §460.101 |
| | | §141.302 | Procurement Protests | | | Procurement Protests. | §460.102 |
| | E | | **Miscellaneous Provisions** | | C | **Miscellaneous Provisions** | |
| | | §141.501 | Public Comment and Requests | | | Public Comment and Requests. | §460.103 |
| | | §141.502 | Approval Authority | | | Approval Authority. | §460.104 |
| | | §141.503 | Training and Education | | | Training and Education. | §460.105 |
| 142 | | | **Investigations and Hearings** | 442 | | **Investigations and Hearings** | |
| | | §142.101 | Definitions | | | Definitions. | §442.101 |
| | | §142.102 | Complaints and Investigations | | | Complaints and Investigations. | §442.102 |
| | | §142.103 | Procedure for Contested Cases for Counselor and Facility Licenses | | | Procedure for Contested Cases for Counselor and Facility Licenses. | §442.103 |
| | | §142.104 | Administrative Penalties for Licensed Facilities and Counselors and Offender Education Programs | | | Administrative Penalties for Licensed Facilities and Counselors and Offender Education Programs. | §442.104 |
| 144 | | | **Contract Administrative Requirements** | 444 | | **Contract Administrative Requirements** | |
| | A | | **General Provisions** | | A | **General Provisions** | |
| | | §144.101 | Definitions | | | Definitions | §444.101 |
| | | §144.102 | Applicability of Chapter | | | Applicability of Chapter | §444.102 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | §144.103 | Waivers | | | Waivers | §444.103 |
| | **B** | | **Funding** | **B** | | **Funding** | |
| | | §144.201 | Applicability of Subchapter | | | Applicability of Subchapter | §444.201 |
| | | §144.202 | Allocation of Funds | | | Allocation of Funds | §444.202 |
| | | §144.203 | Competitive Procurement of Client Services | | | Competitive Procurement of Client Services | §444.203 |
| | | §144.204 | Selection Criteria for Request for Proposal | | | Selection Criteria for Request for Proposal | §444.204 |
| | | §144.205 | Notice of Funding | | | Notice of Funding | §444.205 |
| | | §144.206 | Request for Proposal (RFP) | | | Request for Proposal (RFP) | §444.206 |
| | | §144.207 | Application | | | Application | §444.207 |
| | | §144.208 | Application Criteria | | | Application Criteria | §444.208 |
| | | §144.209 | Funding Decisions | | | Funding Decisions | §444.209 |
| | | §144.210 | Alternative Solicitation | | | Alternative Solicitation | §444.210 |
| | | §144.211 | Other Funding Processes | | | Other Funding Processes | §444.211 |
| | **C** | | **Contract Organization** | | **C** | **Contract Organization** | |
| | | §144.301 | General Requirements | | | General Requirements | §444.301 |
| | | §144.302 | Organizational Structure | | | Organizational Structure | §444.302 |
| | | §144.303 | Policies and Procedures | | | Policies and Procedures | §444.303 |
| | | §144.304 | Organizational and Personnel Changes | | | Organizational and Personnel Changes | §444.304 |
| | | §144.305 | Personnel Requirements and Documentation | | | Personnel Requirements and Documentation | §444.305 |
| | | §144.306 | Commission Logo and Slogan | | | Commission Logo and Slogan | §444.306 |
| | **D** | | **Contract Administration** | | **D** | **Contract Administration** | |
| | | §144.401 | General Contract Provisions | | | General Contract Provisions | §444.401 |
| | | §144.402 | Application of Federal and State Regulations | | | Application of Federal and State Regulations | §444.402 |
| | | §144.403 | Matching Funds | | | Matching Funds | §444.403 |
| | | §144.404 | Program Income | | | Program Income | §444.404 |
| | | §144.405 | Indirect Cost | | | Indirect Cost | §444.405 |
| | | §144.406 | Expenditures Requiring Prior Approval | | | Expenditures Requiring Prior Approval | §444.406 |
| | | §144.407 | Equipment and Supplies | | | Equipment and Supplies | §444.407 |
| | | §144.408 | Minor Remodeling | | | Minor Remodeling | §444.408 |
| | | §144.409 | Subcontracting | | | Subcontracting | §444.409 |
| | | §144.410 | Assignments and Transfers | | | Assignments and Transfers | §444.410 |
| | | §144.411 | Procurement of Goods and Services | | | Procurement of Goods and Services | §444.411 |
| | | §144.412 | Travel | | | Travel | §444.412 |
| | | §144.413 | Financial Eligibility and Third Party Payment | | | Financial Eligibility and Third Party Payment | §444.413 |
| | | §144.414 | Payment Requirements | | | Payment Requirements | §444.414 |
| | | §144.415 | Cost Reimbursement for Prevention/Intervention Programs | | | Cost Reimbursement for Prevention/Intervention Programs | §444.415 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | §144.416 | Billing for Treatment Services | | | Billing for Treatment Services | §444.416 |
| | | §144.417 | BHIPS Requirements | | | BHIPS Requirements | §444.417 |
| | | §144.418 | Reporting | | | Reporting | §444.418 |
| | | §144.419 | Deobligation/Reobligation | | | Deobligation/Reobligation | §444.419 |
| | | §144.420 | Contract Closeout | | | Contract Closeout | §444.420 |
| | E | | **Contract Oversight** | | E | **Contract Oversight** | |
| | | §144.501 | Commission Oversight | | | Commission Oversight | §444.501 |
| | | §144.502 | On-Site Reviews | | | On-Site Reviews | §444.502 |
| | | §144.503 | Independent Audit Report | | | Independent Audit Report | §444.503 |
| | | §144.504 | Auditor Qualifications | | | Auditor Qualifications | §444.504 |
| | | §144.505 | Independent Audit Report Requirements | | | Independent Audit Report Requirements | §444.505 |
| | | §144.506 | Independent Audit Report Submission | | | Independent Audit Report Submission | §444.506 |
| | | §144.507 | Audit Report Desk Reviews | | | Audit Report Desk Reviews | §444.507 |
| 147 | | | **Contract Program Requirements** | 447 | | **Contract Program Requirements** | |
| | A | | **Prevention and Intervention** | | A | **Prevention and Intervention** | |
| | | §147.101 | Applicability and Definitions | | | Applicability and Definitions | §447.101 |
| | | §147.102 | Youth Prevention Programs | | | Youth Prevention Programs | §447.102 |
| | | §147.103 | Program Design and Implementation | | | Program Design and Implementation | §447.103 |
| | | §147.104 | Key Performance and Activity Measures | | | Key Performance and Activity Measures | §447.104 |
| | | §147.105 | Performance Measure Review | | | Performance Measure Review | §447.105 |
| | | §147.106 | Staff Training | | | Staff Training | §447.106 |
| | | §147.107 | Information Dissemination | | | Information Dissemination | §447.107 |
| | | §147.108 | Prevention Education and Skills Training | | | Prevention Education and Skills Training | §447.108 |
| | | §147.109 | Alternative Activities | | | Alternative Activities | §447.109 |
| | | §147.110 | Problem Identification and Referral | | | Problem Identification and Referral | §447.110 |
| | | §147.111 | Community-Based Process | | | Community-Based Process | §447.111 |
| | | §147.112 | Environmental and Social Policy | | | Environmental and Social Policy | §447.112 |
| | | §147.113 | Intervention Services | | | Intervention Services | §447.113 |
| | | §147.114 | Community Coalitions | | | Community Coalitions | §447.114 |
| | | §147.115 | Prevention Resource Centers | | | Prevention Resource Centers | §447.115 |
| | | §147.116 | Pregnant and Parenting Adult and Adolescent Female Prevention Services | | | Pregnant and Parenting Adult and Adolescent Female Prevention Services | §447.116 |
| | B | | **Standards of Care for HIV Programming** | | B | **Standards of Care for HIV Programming** | |
| | | §147.201 | Applicability | | | Applicability | §447.201 |
| | | §147.202 | HIV Required Services | | | HIV Required Services | §447.202 |
| | | §147.203 | Minimum Operational Requirements for HIV Outreach Programs | | | Minimum Operational Requirements for HIV Outreach Programs | §447.203 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | §147.204 | Minimum Operational Requirements for HIV Early Intervention (HEI) Programs | | | Minimum Operational Requirements for HIV Early Intervention (HEI) Programs | §447.204 |
| | C | | **Narcotic Treatment Programs Providing Pharmacotherapy Services** | | C | **Narcotic Treatment Programs Providing Pharmacotherapy Services** | |
| | | §147.301 | Applicability | | | Applicability | §447.301 |
| | | §147.302 | Program Objectives | | | Program Objectives | §447.302 |
| | | §147.303 | Required Services | | | Required Services | §447.303 |
| | | §147.304 | Minimum Operational Requirements | | | Minimum Operational Requirements | §447.304 |
| | D | | **Outreach, Screening, Assessment and Referral (OSAR) Services** | | D | **Outreach, Screening, Assessment and Referral (OSAR) Services** | |
| | | §147.401 | Applicability | | | Applicability | §447.401 |
| | | §147.402 | Standards for Outreach, Screening, Assessment and Referral Service Provision | | | Standards for OSAR Service Provision | §447.402 |
| | E | | **Treatment Performance Standards** | | E | **Treatment Performance Standards** | |
| | | §147.501 | Applicability | | | Applicability | §447.501 |
| | | §147.502 | Select Performance Measure Definitions | | | Select Performance Measure Definitions | §447.502 |
| | F | | **Treatment for Pregnant and Post Partum Women with Dependent Children** | | F | **Treatment for Pregnant and Post Partum Women with Dependent Children** | |
| | | §147.601 | Applicability | | | Applicability | §447.601 |
| | | §147.602 | Purpose of Program | | | Purpose of Program | §447.602 |
| | | §147.603 | Availability of Services | | | Availability of Services | §447.603 |
| | | §147.604 | Individualized Plan of Services | | | Individualized Plan of Services | §447.604 |
| | G | | **Capacity Management and Interim Services** | | G | **Capacity Management and Interim Services** | |
| | | §147.701 | Waiting List and Interim Services | | | Waiting List and Interim Services | §447.701 |
| 148 | | | **Standard of Care** | 448 | | **Standard of Care** | |
| | A | | **Definitions** | | A | **Definitions** | |
| | | §148.101 | Definitions | | | Definitions | §448.101 |
| | | §148.102 | Purpose | | | Purpose | §448.102 |
| | | §148.103 | Scope of Rule | | | Scope of Rule | §448.103 |
| | B | | **Standard of Care Applicable to All Providers** | | B | **Standard of Care Applicable to All Providers** | |
| | | §148.201 | General Standard | | | General Standard | §448.201 |
| | | §148.202 | Scope of Practice | | | Scope of Practice | §448.202 |
| | | §148.203 | Competence and Due Care | | | Competence and Due Care | §448.203 |
| | | §148.204 | Appropriate Services | | | Appropriate Services | §448.204 |
| | | §148.205 | Accuracy | | | Accuracy | §448.205 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | §148.206 | Documentation | | | Documentation | §448.206 |
| | | §148.207 | Discrimination | | | Discrimination | §448.207 |
| | | §148.208 | Access to Services | | | Access to Services | §448.208 |
| | | §148.209 | Location | | | Location | §448.209 |
| | | §148.210 | Confidentiality | | | Confidentiality | §448.210 |
| | | §148.211 | Environment | | | Environment | §448.211 |
| | | §148.212 | Communications | | | Communications | §448.212 |
| | | §148.213 | Exploitation | | | Exploitation | §448.213 |
| | | §148.214 | Duty to Report | | | Duty to Report | §448.214 |
| | | §148.215 | Impaired Providers | | | Impaired Providers | §448.215 |
| | | §148.216 | Ethics | | | Ethics | §448.216 |
| | | §148.217 | Specific Acts Prohibited | | | Specific Acts Prohibited | §448.217 |
| | | §148.218 | Standards of Conduct | | | Standards of Conduct | §448.218 |
| | C | | **Standards for Evidence-Based Prevention Programs** | | C | **Standards for Evidence-Based Prevention Programs** | |
| | | §148.301 | Standards for Evidence-Based Prevention Programs | | | Standards for Evidence-Based Prevention Programs | §448.301 |
| | D | | **Facility Licensure Information** | | D | **Facility Licensure Information** | |
| | | §148.401 | License Required | | | License Required | §448.401 |
| | | §148.402 | Variances | | | Variances | §448.402 |
| | | §148.403 | New Licensure Application | | | New Licensure Application | §448.403 |
| | | §148.404 | Licensure Renewal | | | Licensure Renewal | §448.404 |
| | | §148.405 | Changes in Status | | | Changes in Status | §448.405 |
| | | §148.406 | Inactive Status and Closure | | | Inactive Status and Closure | §448.406 |
| | | §148.407 | Licensure Inspection | | | Licensure Inspection | §448.407 |
| | | §148.408 | Licensure Fees | | | Licensure Fees | §448.408 |
| | | §148.409 | Action Against a License | | | Action Against a License | §448.409 |
| | E | | **Facility Requirements** | | E | **Facility Requirements** | |
| | | §148.501 | Facility Organization | | | Facility Organization | §448.501 |
| | | §148.502 | Operational Plan, Policies and Procedures | | | Operational Plan, Policies and Procedures | §448.502 |
| | | §148.503 | Reporting Measures | | | Reporting Measures | §448.503 |
| | | §148.504 | Quality Management | | | Quality Management | §448.504 |
| | | §148.505 | General Environment | | | General Environment | §448.505 |
| | | §148.506 | Required Postings | | | Required Postings | §448.506 |
| | | §148.507 | General Documentation Requirements | | | General Documentation Requirements | §448.507 |
| | | §148.508 | Client Records | | | Client Records | §448.508 |
| | | §148.509 | Incident Reporting | | | Incident Reporting | §448.509 |
| | | §148.510 | Client Transportation | | | Client Transportation | §448.510 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | **F** | | **Personnel Practices and Development** | | **F** | **Personnel Practices and Development** | |
| | | §148.601 | Hiring Practices | | | Hiring Practices | §448.601 |
| | | §148.602 | Students and Volunteers | | | Students and Volunteers | §448.602 |
| | | §148.603 | Training | | | Training | §448.603 |
| | **G** | | **Client Rights** | | **G** | **Client Rights** | |
| | | §148.701 | Client Bill of Rights | | | Client Bill of Rights | §448.701 |
| | | §148.702 | Client Grievances | | | Client Grievances | §448.702 |
| | | §148.703 | Abuse, Neglect, and Exploitation | | | Abuse, Neglect, and Exploitation | §448.703 |
| | | §148.704 | Program Rules | | | Program Rules | §448.704 |
| | | §148.705 | Client Labor and Interactions | | | Client Labor and Interactions | §448.705 |
| | | §148.706 | Restraint and Seclusion | | | Restraint and Seclusion | §448.706 |
| | | §148.707 | Responding to Emergencies | | | Responding to Emergencies | §448.707 |
| | | §148.708 | Searches | | | Searches | §448.708 |
| | **H** | | **Screening and Assessment** | | **H** | **Screening and Assessment** | |
| | | §148.801 | Screening | | | Screening | §448.801 |
| | | §148.802 | Admission Authorization and Consent to Treatment | | | Admission Authorization and Consent to Treatment | §448.802 |
| | | §148.803 | Assessment | | | Assessment | §448.803 |
| | | §148.804 | Treatment Planning, Implementation and Review | | | Treatment Planning, Implementation and Review | §448.804 |
| | | §148.805 | Discharge | | | Discharge | §448.805 |
| | **I** | | **Treatment Program Services** | | **I** | **Treatment Program Services** | |
| | | §148.901 | Requirements Applicable to All Treatment Services | | | Requirements Applicable to All Treatment Services | §448.901 |
| | | §148.902 | Requirements Applicable to Detoxification Services | | | Requirements Applicable to Detoxification Services | §448.902 |
| | | §148.903 | Requirements Applicable to Residential Services | | | Requirements Applicable to Residential Services | §448.903 |
| | | §148.904 | Requirements for Outpatient Treatment Programs | | | Requirements for Outpatient Treatment Programs | §448.904 |
| | | §148.905 | Additional Requirements for Adolescent Programs | | | Additional Requirements for Adolescent Programs | §448.905 |
| | | §148.906 | Access to Services for Co-Occurring Psychiatric and Substance Use Disorders (COPSD) Clients | | | Access to Services for Co-Occurring Psychiatric and Substance Use Disorders (COPSD) Clients | §448.906 |
| | | §148.907 | Additional Requirements for COPSD Programs | | | Additional Requirements for COPSD Programs | §448.907 |
| | | §148.908 | Specialty Competencies of Staff Providing Services to Clients with COPSD | | | Specialty Competencies of Staff Providing Services to Clients with COPSD | §448.908 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | §148.909 | Treatment Planning of Services to Clients with COPSD | | | Treatment Planning of Services to Clients with COPSD | §448.909 |
| | | §148.910 | Treatment Services for Women and Children | | | Treatment Services for Women and Children | §448.910 |
| | | §148.911 | Treatment Services Provided by Electronic Means | | | Treatment Services Provided by Electronic Means | §448.911 |
| | J | | **Medication** | | J | **Medication** | |
| | | §148.1001 | General Provisions for Medication | | | General Provisions for Medication | §448.1001 |
| | | §148.1002 | Medication Storage | | | Medication Storage | §448.1002 |
| | | §148.1003 | Medication Inventory and Disposal | | | Medication Inventory and Disposal | §448.1003 |
| | | §148.1004 | Administration of Medication | | | Administration of Medication | §448.1004 |
| | K | | **Food and Nutrition** | | K | **Food and Nutrition** | |
| | | §148.1101 | Meals in Outpatient Programs | | | Meals in Outpatient Programs | §448.1101 |
| | | §148.1102 | Meals in Residential Programs | | | Meals in Residential Programs | §448.1102 |
| | | §148.1103 | Meals Prepared by Clients | | | Meals Prepared by Clients | §448.1103 |
| | | §148.1104 | Meals Provided by a Food Service | | | Meals Provided by a Food Service | §448.1104 |
| | L | | **Residential Physical Plant Requirements** | | L | **Residential Physical Plant Requirements** | |
| | | §148.1201 | General Physical Plant Provisions | | | General Physical Plant Provisions | §448.1201 |
| | | §148.1202 | Required Inspections | | | Required Inspections | §448.1202 |
| | | §148.1203 | Emergency Evacuation | | | Emergency Evacuation | §448.1203 |
| | | §148.1204 | Exits | | | Exits | §448.1204 |
| | | §148.1205 | Space, Furniture and Supplies | | | Space, Furniture and Supplies | §448.1205 |
| | | §148.1206 | Fire Systems | | | Fire Systems | §448.1206 |
| | | §148.1207 | Other Physical Plant Requirements | | | Other Physical Plant Requirements | §448.1207 |
| | M | | **Court Commitment Services** | | M | **Court Commitment Services** | |
| | | §148.1301 | Court Commitment Services | | | Court Commitment Services | §448.1301 |
| | N | | **Therapeutic Communities** | | N | **Therapeutic Communities** | |
| | | §148.1401 | Therapeutic Communities | | | Therapeutic Communities | §448.1401 |
| | O | | **Faith Based Chemical Dependency Programs** | | O | **Faith Based Chemical Dependency Programs** | |
| | | §148.1501 | Definitions | | | Definitions | §448.1501 |
| | | §148.1502 | Exemption for Faith-Based Programs | | | Exemption for Faith-Based Programs | §448.1502 |
| | | §148.1503 | Registration for Exempt Faith-Based Programs | | | Registration for Exempt Faith-Based Programs | §448.1503 |
| | | §148.1504 | Admission to Faith-Based Programs | | | Admission to Faith-Based Programs | §448.1504 |
| | | §148.1505 | Advertisement | | | Advertisement | §448.1505 |
| | | §148.1506 | Revocation of Exemption | | | Revocation of Exemption | §448.1506 |
| **150** | | | **Counselor Licensure** | **450** | | **Counselor Licensure** | |
| | | §150.101 | License Required | | | License Required | §450.101 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | §150.102 | Scope of Practice | | | Scope of Practice | §450.102 |
| | | §150.103 | Commission Review | | | Commission Review | §450.103 |
| | | §150.104 | Fees | | | Fees | §450.104 |
| | | §150.105 | Licensure Application Standards and Registration | | | Licensure Application Standards and Registration | §450.105 |
| | | §150.106 | Requirements for Counselor Intern Registration | | | Requirements for Counselor Intern Registration | §450.106 |
| | | §150.107 | Standards for 270 Educational Hours | | | Standards for 270 Educational Hours | §450.107 |
| | | §150.108 | Practicum Standards | | | Practicum Standards | §450.108 |
| | | §150.109 | Education and Experience Exemptions/Waivers | | | Education and Experience Exemption/Waivers | §450.109 |
| | | §150.110 | Requirements for Licensure | | | Requirements for Licensure | §450.110 |
| | | §150.111 | Standards for Supervised Work Experience | | | Standards for Supervised Work Experience | §450.111 |
| | | §150.112 | Examination | | | Examination | §450.112 |
| | | §150.113 | Issuing Licenses | | | Issuing Licenses | §450.113 |
| | | §150.114 | Licensure through Reciprocity | | | Licensure through Reciprocity | §450.114 |
| | | §150.115 | Criminal History Standards | | | Criminal History Standards | §450.115 |
| | | §150.116 | License Expiration and Renewal | | | License Expiration and Renewal | §450.116 |
| | | §150.117 | Continuing Education Standards | | | Continuing Education Standards | §450.117 |
| | | §150.118 | Inactive Status | | | Inactive Status | §450.118 |
| | | §150.119 | Documentation | | | Documentation | §450.119 |
| | | §150.120 | Counseling Through Electronic Means | | | Counseling Through Electronic Means | §450.120 |
| | | §150.121 | Ethical Standards | | | Ethical Standards | §450.121 |
| | | §150.122 | Actions Against a License | | | Actions Against a License | §450.122 |
| | | §150.123 | Clinical Training Institution (CTI) Registration | | | Clinical Training Institution (CTI) Registration | §450.123 |
| | | §150.124 | Clinical Training Institution (CTI) Standards | | | Clinical Training Institution (CTI) Standards | §450.124 |
| | | §150.125 | Direct Supervision of Interns | | | Direct Supervision of Interns | §450.125 |
| | | §150.126 | Intern Violations | | | Intern Violations | §450.126 |
| 151 | | | **Peer Assistance** | 451 | | **Peer Assistaance** | |
| | | §151.1 | Authority | | | Authority | §451.101 |
| | | §151.2 | Program Purpose | | | Program Purpose | §451.102 |
| | | §151.3 | Applicability | | | Applicability | §451.103 |
| | | §151.4 | Relationship to Licensing/Disciplinary Authority | | | Relationship to Licensing/Disciplinary Authority | §451.104 |
| | | §151.5 | Program Requirements | | | Program Requirements | §451.105 |
| | | §151.11 | Definitions | | | Definitions | §451.106 |
| | | §151.21 | Organization | | | Organization | §451.107 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | §151.22 | Staffing | | | Staffing | §451.108 |
| | | §151.31 | Program Description | | | Program Description | §451.109 |
| | | §151.32 | Policies and Procedures | | | Policies and Procedures | §451.110 |
| | | §151.51 | Referrals to Assessment/Treatment Resources | | | Referrals to Assessment/Treatment Resources | §451.111 |
| | | §151.61 | Certification | | | Certification | §451.112 |
| 153 | | | **Offender Education Programs** | 453 | | **Offender Education Programs** | |
| | | §153.101 | Definitions | | | Definitions | §453.101 |
| | | §153.102 | Scope of Rules | | | Scope of Rules | §453.102 |
| | | §153.103 | Fees | | | Fees | §453.103 |
| | | §153.104 | Application and Approval/Certification | | | Application and Approval/Certification | §453.104 |
| | | §153.105 | Expiration and Renewal | | | Expiration and Renewal | §453.105 |
| | | §153.106 | Exceptions | | | Exceptions | §453.106 |
| | | §153.107 | Disciplinary Action | | | Disciplinary Action | §453.107 |
| | | §153.108 | Administrative Penalties for Offender Education Programs | | | Administrative Penalties for Offender Education Programs | §453.108 |
| | | §153.109 | Program Content and Materials | | | Program Content and Materials | §453.109 |
| | | §153.110 | Uniform Certificates of Course Completion | | | Uniform Certificates of Course Completion | §453.110 |
| | | §153.111 | Confidentiality | | | Confidentiality | §453.111 |
| | | §153.112 | Discrimination Prohibited | | | Discrimination Prohibited | §453.112 |
| | | §153.113 | Participant Complaints | | | Participant Complaints | §453.113 |
| | | §153.114 | Classroom Facilities and Equipment | | | Classroom Facilities and Equipment | §453.114 |
| | | §153.115 | Program Administration | | | Program Administration | §453.115 |
| | | §153.116 | Recordkeeping and Reporting | | | Recordkeeping and Reporting | §453.116 |
| | | §153.117 | Program Instructors | | | Program Instructors | §453.117 |
| | | §153.118 | General Program Operation Requirements | | | General Program Operation Requirements | §453,118 |
| | | §153.119 | Additional Requirements for Drug Offender Education Programs | | | Additional Requirements for Drug Offender Education Programs | §453.119 |
| | | §153.120 | Additional Requirements for Alcohol Education Program for Minors | | | Additional Requirements for Alcohol Education Program for Minors | §453.120 |
| | | §153.121 | Additional Requirements for DWI Education Programs | | | Additional Requirements for DWI Education Programs | §453.121 |
| | | §153.122 | Additional Requirements for DWI Intervention Programs | | | Additional Requirements for DWI Intervention Programs | §453.122 |

Figure: 40 TAC Part 9

| Current Rules from Title 40, Part 9 Texas Department on Aging | | | | Transferred to Title 40, Part 1 Department of Aging and Disability Services | | | |
|---|---|---|---|---|---|---|---|
| **Chapter and Subchapter** | | **Section** | **Heading** | **Chapter and Subchapter** | | **Section** | **Heading** |
| **253** | | | **State Aging Plan** | **80** | | | **State Aging Plan** |
| | | §253.3 | Area Agency on Aging Funding Allocation Formula for Older Americans Act Programs | | | §80.3 | Area Agency on Aging Funding Allocation Formula for Older Americans Act Programs |
| **254** | | | **Operation of the Texas Department on Aging** | **81** | | | **Operation of the Area Agencies on Aging** |
| | | §254.9 | Designation of Planning and Service Areas | | | §81.9 | Designation of Planning and Service Areas |
| | | §254.11 | Designation of Area Agencies on Aging | | | §81.11 | Designation of Area Agencies on Aging |
| | | §254.13 | Compliance with Contractor Responsibilities, Rewards and Sanctions | | | §81.13 | Compliance with Contractor Responsibilities, Rewards and Sanctions |
| | | §254.15 | Appeal Procedures for Area Agency on Aging Contractors | | | §81.15 | Appeal Procedures for Area Agency on Aging Contractors |
| | | §254.17 | Appeal Procedures for Subcontractors, Vendors, and Service Provider Applicants | | | §81.17 | Appeal Procedures for Subcontractors, Vendors, and Service Provider Applicants |
| | | §254.19 | Grievance Procedures for Participants in Older Americans Act Programs | | | §81.19 | Grievance Procedures for Participants in Older Americans Act Programs |
| | | §254.21 | Americans with Disabilities Act (ADA) Grievance Procedures for Participants in Older Americans Act Programs | | | §81.21 | Americans with Disabilities Act (ADA) Grievance Procedures for Participants in Older Americans Act Programs |
| | | §254.23 | Emergency Management Responsibilities of the Texas Department on Aging | | | §81.23 | Emergency Management Responsibilities of the Texas Department on Aging |
| **254** | | | **Operation of the Texas Department on Aging** | **100** | | | **Miscellaneous** |
| | | | | | **A** | | **Operation of the Texas Department on Aging** |
| | | §254.1 | Operation of the Texas Department on Aging | | | §100.1 | Operation of the Texas Department on Aging |
| | | §254.3 | Governing Documents | | | §100.3 | Governing Documents |
| | | §254.5 | The Texas Board on Aging | | | §100.5 | The Texas Board on Aging |
| | | §254.7 | Advisory Councils | | | §100.7 | Advisory Councils |
| | | §254.22 | Public Hearing Procedures for the Texas Department on Aging | | | §100.22 | Public Hearing Procedures for the Texas Department on Aging |
| | | §254.24 | Agency Training Plan | | | §100.24 | Agency Training Plan |
| | | §254.35 | Historically Underutilized Business Program | | | §100.35 | Historically Underutilized Business Program |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| **255** | | | **State Delivery Systems** | **82** | | | **State Delivery Systems** |
| | | §255.39 | Funding Allocation Formula for Retired Senior Volunteer Program Projects | | | §82.39 | Funding Allocation Formula for Retired Senior Volunteer Program Projects |
| **260** | | | **Area Agency on Aging Administrative Requirements** | **83** | | | **Area Agency on Aging Administrative Requirements** |
| | | §260.1 | Area Agency on Aging Administrative Responsibilities | | | §83.1 | Area Agency on Aging Administrative Responsibilities |
| | | §260.2 | Area Agency on Aging Fiscal Responsibilities | | | §83.2 | Area Agency on Aging Fiscal Responsibilities |
| | | §260.3 | System of Access and Assistance | | | §83.3 | System of Access and Assistance |
| | | §260.4 | Certification of Benefits Counselors Regarding the Preparation of Advanced Directives | | | §83.4 | Certification of Benefits Counselors Regarding the Preparation of Advanced Directives |
| | | §260.11 | Ombudsman Services | | | §83.11 | Ombudsman Services |
| | | §260.15 | Criteria for Administering Carryover of Unexpended Funds | | | §83.15 | Criteria for Administering Carryover of Unexpended Funds |
| | | §260.17 | Approval of Direct Services Applications from Area Agencies on Aging | | | §83.17 | Approval of Direct Services Applications from Area Agencies on Aging |
| | | §260.19 | Direct Purchase of Service (DPS) | | | §83.19 | Direct Purchase of Service (DPS) |
| **270** | | | **General Service Requirements** | **84** | | | **General Service Requirements** |
| | | §270.1 | General Service Requirements | | | §84.1 | General Service Requirements |
| | | §270.2 | Services Definitions | | | §84.2 | Services Definitions |
| | | §270.3 | Transportation Service Requirements for the Elderly | | | §84.3 | Transportation Service Requirements for the Elderly |
| | | §270.5 | Nutrition Service Requirements | | | §84.5 | Nutrition Service Requirements |
| | | §270.6 | Participant Assessment | | | §84.6 | Participant Assessment |
| | | §270.7 | Homemaker Service Requirements | | | §84.7 | Homemaker Service Requirements |
| | | §270.8 | Data Management | | | §84.8 | Data Management |
| | | §270.9 | Personal Assistance Service Requirements | | | §84.9 | Personal Assistance Service Requirements |
| | | §270.11 | Health Promotion Requirements | | | §84.11 | Health Promotion Requirements |
| | | §270.13 | Adult Day Care Service Requirements | | | §84.13 | Adult Day Care Service Requirements |
| | | §270.15 | Emergency Response Service Standards | | | §84.15 | Emergency Response Service Standards |
| | | §270.17 | In Home Service Requirements for Frail Older Adults | | | §84.17 | In Home Service Requirements for Frail Older Adults |
| | | §270.19 | Residential Repair Services | | | §84.19 | Residential Repair Services |
| | | §270.21 | Senior Center Requirements | | | §84.21 | Senior Center Requirements |
| | | §270.23 | Respite Voucher Program | | | §84.23 | Respite Voucher Program |

# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas State Board of Medical Examiners

**Title 22, Part 9**

The Texas State Board of Medical Examiners proposes to review Chapter 187 (§§187.1-187.4, 187.6-187.27, 187.29-187.39, 187.42-187.44, 187.55-187.62), concerning Procedural Rules, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas State Board of Medical Examiners contemporaneously proposes amendments to Chapter 187.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Colleen Klein, P.O. Box 2018, Austin, Texas 78768-2018.

TRD-200405493
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Filed: August 30, 2004

♦ ♦ ♦

State Pension Review Board

**Title 40, Part 17**

The State Pension Review Board (PRB), beginning September 2004, will review and consider for readoption, of Chapter 604 concerning Historically Underutilized Businesses, in accordance with the General Appropriations Act, Article IX, Sections 167, 75th Legislature. The rules are located in Title 40 Part 17, of the Texas Administrative Code, and contain the following section; §604.1 Historically Underutilized Businesses.

The board will consider, among other things, whether the reasons for readoption of these rules continue to exist. The comment period will last for 30 days beginning with the publication of this notice of intention to review. Comments or questions regarding this notice of intention to review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register*, to Ms. Virginia Smith, Executive Director, P.O. Box 13498, Austin, Texas 78711-3498 or by e-mail to prb@mail.capnet.state.tx.us.

TRD-200405386
Lynda Baker
Executive Assistant
State Pension Review Board
Filed: August 26, 2004

♦ ♦ ♦

## Adopted Rule Reviews

Employees Retirement System of Texas

**Title 34, Part 4**

The Employees Retirement System of Texas (ERS) has completed the review of the Texas Administrative Code, Title 34, Part 4, Chapter 79 concerning Social Security, in accordance with the requirements of the Texas Government Code, §2001.039. The notice of intention to review this Chapter was published in the May 14, 2004, issue of the *Texas Register* (29 TexReg 4933).

During this review period, ERS made changes to Chapter 79, that were adopted by the Board on June 9, 2004.

No comments were received regarding this review.

ERS has reviewed the rules in Chapter 79, and has determined that the reasons for adopting these rules continue to exist. The rules in Chapter 79 are, therefore, readopted in accordance with the requirements of Texas Government Code §2001.039. This concludes ERS' review of Chapter 79.

TRD-200405383
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: August 25, 2004

♦ ♦ ♦

Texas Department of Transportation

**Title 43, Part 1**

Notice of Readopted Rule: In accordance with Government Code, §2001.039, the Texas Department of Transportation (department) readopts Title 43, TAC, Part 1, Chapter 1, Management; and Chapter 11, Design. This concludes the review of Chapters 1 and 11.

The proposed review was published in the May 7, 2004, issue of the *Texas Register* (29 TexReg 4556). No comments were received regarding the readoption of these rules. The Texas Transportation Commission (commission) has reviewed these rules and determined that the reasons for initially adopting them continue to exist.

TRD-200405403

Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: August 27, 2004

♦ ♦ ♦

# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §26.32(i)(2)

**********

**Charges on Your Telephone Bill**

**Your Rights as a Customer**

Placing charges on your phone bill for products or services without your consent is known as "cramming" and is prohibited by law. Your telephone company may be providing billing services for other companies, so other companies' charges may appear on your telephone bill.

If you believe you were "crammed," you should contact the telephone company that bills you for your telephone service, (insert name of company), at (insert company's toll-free telephone number) and request that it take corrective action. The Public Utility Commission of Texas requires the billing telephone company to do the following within 45 calendar days of when it learns of the unauthorized charge:

- Notify the service provider to cease charging you for the unauthorized product or service;
- remove any unauthorized charge from your bill;
- refund or credit all money to you that you have paid for an unauthorized charge; and

- on your request, provide you with all billing records related to any unauthorized charge within 15 business days after the charge is removed from your telephone bill.

If the company fails to resolve your request, or if you would like to file a complaint, please write or call the Public Utility Commission of Texas, PO Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Your phone service cannot be disconnected for disputing or refusing to pay unauthorized charges.

You may have additional rights under state and federal law. Please contact the Federal Communications Commission, the Attorney General of Texas, or the Public Utility Commission of Texas if you would like further information about possible additional rights.

**********

Figure: 22 TAC §89.1(b)

**§1602.251. License or Certificate Required.**

(a) Performing or attempting to perform any practice of cosmetology without first obtaining a license.

(1) Civil Penalties:

1st Offense $500
2nd Offense $1,000
3rd Offense $1,000

(b) Instructing cosmetology or a related specialty course without first obtaining the appropriate instructor license.

(1) Civil Penalties:

1st Offense $500
2nd Offense $1,000
3rd Offense $1,000

(c) Conducting or operating a beauty shop, beauty culture school, specialty shop or any other place of business in which the practice of cosmetology is taught or practiced without first obtaining a license.

(1) Civil Penalties:

1st Offense $500
2nd Offense $1,000
3rd Offense $1,000

**§1602.263. Reciprocal License or Certificate.**

(c) Failure to obtain reciprocity.

(1) Civil Penalties:

1st Offense $300
2nd Offense $500
3rd Offense $1,000

**§1602.266. Student Permit.**

(a) Failure to have student permit.

(1) Civil Penalties:

1st Offense $75 [~~warning~~]
2nd Offense $100
3rd Offense $200

**§1602.267. Shampoo Apprentice Permit.**

Failure to have shampoo apprentice permit.

(1) Civil Penalties:

1st Offense $50
2nd Offense $75
3rd Offense $100

**§1602.301. Facility License Required.**

Operating a beauty shop, beauty culture school, specialty shop, or other place of business in which cosmetology is taught or practiced without obtaining the appropriate business license.

(1) Civil Penalties:

1st Offense $500
2nd Offense $1,000
3rd Offense $1,000

Operating in a public or private beauty culture school or a beauty or specialty salon as an independent contractor without first obtaining the appropriate license.

(1) Civil Penalties:

1st Offense $500
2nd Offense $1,000
3rd Offense $1,000

**§1602.302. Beauty Shop License.**

(b) Failure to provide proof of particular requisites established by the Commission.

(1) Civil Penalties:

1st Offense $100
2nd Offense $200
3rd Offense $500

**§1602.303. Private Beauty Culture School License.**

(a) Failure to obtain private culture school license (Refer to §1602.301.)

**§1602.305. Specialty Shop License.**

Operating/practicing out of scope of specialty license as specified in §1602.002 (2), (4), (7) or (10).

(1) Civil Penalties:

1st Offense $500
2nd Offense $1,000
3rd Offense $1,000

**§1602.306. Booth Rental License.**

Failure to obtain a booth license. (Refer to §1602.301.)

**§1602.352. Procedure for Renewal or Reinstatement.**

(c) Expired license less than 30 days.

(1) Civil Penalties:

1st Offense $50
2nd Offense $300
3rd Offense $500

(d) Practicing or operating a facility with license expired over 30 days.

(1) Civil Penalties:

1st Offense $300
2nd Offense $500
3rd Offense $1000

**§1602.401. Display of License.**

(a) The holder of a license did not display the license or certificate in his place of business or employment. (Refer to §89.43.)

**§1602.403. Employment of License or Certificate Holder.**

(a) Employed a person holding an operator, manicure license, specialty certificate solely to perform the practices of cosmetology for which the person is licensed or certified, or employed a person holding an instructor license to perform any acts or practices of cosmetology on the premises of a beauty culture school.

(1) Civil Penalties:

1st Offense $500
2nd Offense $1,000
3rd Offense $1,000

(b) Operated a cosmetology or specialty salon without direct supervision of a person holding an operator, specialty or instructor license.

(1) Civil Penalties:

1st Offense $500
2nd Offense $1,000
3rd Offense $1,000

(c) Employed a person as an operator or specialist, or leased or rented to a person who has not first obtained a license or certificate under this Act, or who has not obtained a license or certificate under the law regulating barbers.

(1) Civil Penalties:

1st Offense $500
2nd Offense $1,000
3rd Offense $1,000

**§1602.404. Operating Certain Shops or Schools on Single Premises.**

School/Salon operating in conjunction another facility without proper separation.

(1) Civil Penalties:

1st Offense $200
2nd Offense $500
3rd Offense $1,000

**§1602.406. Infectious and Contagious Diseases.**

(a) Practicing cosmetology knowingly suffering with an infectious/communicable disease for which the person is not entitled to protection under the federal Americans with Disabilities Act of 1990 (ADA).

(1) Civil Penalties:

1st Offense $300
2nd Offense $500
3rd Offense $1,000

(b) Knowingly employed an infectious/contagious person who is not entitled to protection under ADA.

(1) Civil Penalties:

1st Offense $300
2nd Offense $500
3rd Offense $1,000

**§1602.407. Grounds for Refusing, Revoking, or Suspending License.**

(a) Secured a license or certificate by fraud or deceit.

(1) Civil Penalties:

1st Offense $1,000
2nd Offense $1,000
3rd Offense $1,000

(b) Violated or conspired to violate.

(1) Civil Penalties:

1st Offense $500
2nd Offense $750
3rd Offense $1,000

(c) Made false/misleading statements in advertising.

(1) Civil Penalties:

1st Offense $500
2nd Offense $750
3rd Offense $1,000

(d) Advertised and/or practiced under trade name of another license.

(1) Civil Penalties:

1st Offense $500
2nd Offense $750
3rd Offense $1,000

(e) Engaged in gross malpractice in cosmetology.

(1) Civil Penalties:

1st Offense $1,000
2nd Offense $1,000
3rd Offense $1,000

**§1602.453. Course Length and Curriculum Content.**

(d) Manipulating course lengths.

(1) Civil Penalties:

1st Offense $100 [~~warning~~]
2nd Offense $500
3rd Offense $1,000

**§1602.455. Transfer of Hours of Instruction.**

(b) Did not submit transcript of hours to TCC.

(1) Civil Penalties:

1st Offense $75 [~~warning~~]
2nd Offense $100
3rd Offense $200

**§1602.456. Identification of and Work Performed by Students.**

(b) Student practice with less than 10% of hours.

(1) Civil Penalties:

1st Offense $200
2nd Offense $500
3rd Offense $1,000

**§1602.457. Cancellation and Settlement Policy.**

Failure to maintain cancellation policy that provides a full refund of all money paid by a student if the student cancels the agreement not later than midnight of the third day after the date

on which the agreement or contract is signed by the student, excluding Saturdays, Sundays, and legal holidays, or entered into the enrollment agreement or contract because of

misrepresentation made in the advertising or promotional materials of the school or by an owner or representative of the school.

(1) Civil Penalties:

1st Offense $100 [~~warning~~]
2nd Offense $500
3rd Offense $1,000

**§1602.458. Refund Policy.**

Failure to maintain refund policy for the refund of the unused part of tuition, fees, and other charges assessed by the student if the student, at the expiration of the cancellation period,

established under §1602.457, fails to enter the course of training, withdraws from the course of training, or is terminated from the course of training before completion of the course.

(1) Civil Penalties:

1st Offense $100 [~~warning~~]
2nd Offense $500
3rd Offense $1,000

**§1602.459. Withdrawal or Termination of Student.**

(b) Failure to refund correct percentage.

(1) Civil Penalties:

1st Offense $100 [~~warning~~]
2nd Offense $500
3rd Offense $1,000

(c) Failure to refund within 30 days.

(1) Civil Penalties:

1st Offense warning
2nd Offense $500
3rd Offense $1,000

**§1602.461. Reentry of Student After Withdrawal or Termination.**

Failure to allow a student to re-enter after withdrawing or terminating voluntarily after 50% of the course is completed within 48 months after withdrawal or termination

(1) Civil Penalties:

1st Offense $100 [~~warning~~]
2nd Offense $500
3rd Offense $1,000

**§1602.551. Right of Access; Discovery of Violation.**

Failing to allow the commission to inspect the premises during the practice of business, or obstructing or hindering the normal progress of the inspection, threatening or exerting physical harm, or enabling or allowing another individual to impede the inspection progress is a violation and shall incur the following penalties:

(1) Civil Penalties:

1st Offense $1,000
2nd Offense $1,000
3rd Offense $1,000

**§89.4. Instructor on Duty.**

(a) No instructor on duty.

(1) Civil Penalties:

1st Offense $300
2nd Offense $500
3rd Offense $1,000

**§89.5. License Fees.**

Failure to notify commission within 10 days of address change.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $100
3rd Offense $200

**§89.6. New Location or Change in Floor Plan of School.**

(a) Did not notify change of location (Private cosmetology school) (Refer to §89.41.)

(a.1) Did not submit floor plan/inadequate square footage (Refer to §89.53.)

(a.1.A) Theory and Lab not divided into two separate areas (Refer to §89.53.)

(a.1.B) Does not have separate restrooms (Refer to §89.53.)

(a.2) No fire or electrical inspection.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $200
3rd Offense $500

(a.3) Failure to have notarized statement of equipment.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $200
3rd Offense $500

(a.4) Failure to provide proof of ownership.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $200
3rd Offense $500

(b) Did not notify change of location (Public cosmetology school) (Refer to §89.41.)

(b.1) Did not submit floor plan (refer to §89.53.)

(b.2) No fire or electrical inspection.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $200
3rd Offense $500

(b.3) Failure to have notarized statement of equipment.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $200
3rd Offense $500

(b.4) Failure to provide proof of 12 month lease.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $200
3rd Offense $500

**§89.7. Student Work.**

(b) Offering compensation to students for services.

(1) Civil Penalties:

1st Offense $200
2nd Offense $500
3rd Offense $1,000

**§89.8. Student Registration.**

Failure to send in registration within 10 days of enrollment (per registration packet).

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $100
3rd Offense $200

**§89.9. Student Permits.**

Failure to attach picture to permit[~~/Failure to alphabetize permits~~].

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $75 [~~$25~~]
3rd Offense $100 [~~$50~~]

**§89.10. Monthly Hour Report.**

Monthly hour report not complete and accurate.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $75 [~~$25~~]
3rd Offense $100 [~~$50~~]

**§89.11. Daily Attendance Records.**

(a) Time clock not in use/Clock requirements not posted.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $100
3rd Offense $200

(a.1) Clocking by other than individual.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $75 [~~$25~~]
3rd Offense $100 [~~$50~~]

(a.2) Writing in times other than those resulting from clock failure.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $75 [~~$25~~]
3rd Offense $100 [~~$50~~]

(a.3) Students not clocking out for lunch.

(1) Civil Penalties:

1st Offense $25 [~~warning~~]
2nd Offense $50 [~~$25~~]
3rd Offense $75 [~~$50~~]

(a.4) Failure to clock out when leaving the facility.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $75 [~~$25~~]
3rd Offense $100 [~~$50~~]

(b) No written documentation of time clock failure.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $75 [~~$100~~]
3rd Offense $100 [~~$200~~]

(c) Did not notify a change of business hours.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $100
3rd Offense $200

**§89.13. Reducing, Increasing, or Withholding of Hours.**

(a) Reduction or increase in hours.

(1) Civil Penalties:

1st Offense $100
2nd Offense $200
3rd Offense $500

(b) Past 10 day drop/graduation reported.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $100
3rd Offense $200

(c) Manipulating hours.

(1) Civil Penalties:

1st Offense $250
2nd Offense $500
3rd Offense $1,000

**§89.14. Concurrent Enrollment and Make-up Hours.**

Enrollment of a student in more than one school at a time.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $100
3rd Offense $200

**§89.15. Failure to Attach Current Photograph to License.**

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $75 [~~$25~~]
3rd Offense $100 [~~$50~~]

**§89.22. Transfer of Hours (Out of State Students).**

Illegally transferred student hours.

(1) Civil Penalties:

1st Offense $100
2nd Offense $200
3rd Offense $500

**§89.24. General Provisions Regarding Transfer of Hours.**

Failure to report hours on monthly hour report of transfer student (Refer to §89.13(c).)

**§89.28. Withdrawal From School.**

(a) Failure to drop student in 30 days.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $100
3rd Offense $200

(b) Did not provide transcript to student.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $100
3rd Offense $200

(c) Failure to keep transcripts in student's file/Records not kept for 48 months.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $100
3rd Offense $200

**§89.29. Practical Applications of the Curriculum.**

(b) Failure of student to keep record of practical applications that have been verified by an instructor' signature.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $75 [~~$50~~]
3rd Offense $100

**§89.35. Uniforms.**

(Possible Student Violations for (a) and (b).)

(a) Improper uniform.

(1) Civil Penalties:

1st Offense $75 [~~warning~~]
2nd Offense $25 [~~$25~~]
3rd Offense $75 [~~$50~~]

(b) Improper attire.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $75 [~~$25~~]
3rd Offense $100 [~~$50~~]

**§89.38. Solid Wall/Solid Door.**

Inadequate separation.

(1) Civil Penalties:

1st Offense $100
2nd Offense $300
3rd Offense $750

**§89.39. New Salon.**

Failure to meet salon requirements.

(1) Civil Penalties:

1st Offense $300
2nd Offense $500
3rd Offense $1,000

(k) Permitting representation as a barber shop (use of a barber pole, other devices) (Refer to §1602.407 (3) and (4).)

**§89.41. Change of Location of a Salon or School.**

Failure to comply with change of location procedures.

(1) Civil Penalties:

1st Offense $100
2nd Offense $300
3rd Offense $500

**§89.42. Restrooms.**

No rest room with sink available (Refer to §89.39.)

**§89.43. Items To Be Posted in Salon or School.**

(a) Failure to post salon or school license and/or certificate as appropriate, consumer complaint information, current commission laws, rules, and regulations, current sanitary rules and regulations, and the last inspection report in the reception area in public view.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $75 [~~$50~~]
3rd Offense $100

(b) Failure to post consumer sign with letters no small than one inch in height.

(1) Civil Penalties:

1st Offense $25 [~~warning~~]
2nd Offense $50
3rd Offense $100

(c) Failure to post business hours.

(1) Civil Penalties:

1st Offense $25 [~~warning~~]
2nd Offense $50
3rd Offense $100

**§89.44. Salon in Connection With Other Business.**

Prepared food for sale.

(1) Civil Penalties:

1st Offense $100 [~~warning~~]
2nd Offense $200
3rd Offense $500

**§89.46. Itinerant Beauty Salons.**

Operated itinerant salon.

(1) Civil Penalties:

1st Offense $500
2nd Offense $1,000
3rd Offense $1,000

**§89.50. Resale of Hairpieces.**

Resale of unsanitary hairpieces.

(1) Civil Penalties:

1st Offense $500
2nd Offense $1,000
3rd Offense $1,000

**§89.53. Minimum Requirements for Both Private and Public Cosmetology Schools.**

(a) Inadequate square footage (private cosmetology schools).

(1) Civil Penalties:

1st Offense $300
2nd Offense $500
3rd Offense $1,000

(b) Inadequate square footage (public cosmetology schools).

(1) Civil Penalties:

1st Offense $300
2nd Offense $500
3rd Offense $1,000

(c) Failure to meet requirements.

(1) Civil Penalties:

1st Offense $75 [~~warning~~]
2nd Offense $100
3rd Offense $200

**§89.54. Independent Contractor (IC)/Booth Rental License.**

(a.1) Failure to meet IC cosmetology salon requirements.

(1) Civil Penalties:

1st Offense $300
2nd Offense $500
3rd Offense $1,000

(a.2) Failure to meet IC facial salon requirements.

(1) Civil Penalties:

1st Offense $300
2nd Offense $500
3rd Offense $1,000

(a.3) Failure to meet IC manicure salon requirements.

(1) Civil Penalties:

1st Offense $300
2nd Offense $500
3rd Offense $1,000

(f) Failure to post original booth license at each location.

(1) Civil Penalties:

1st Offense $100 [~~warning~~]
2nd Offense $200
3rd Offense $500

(g) Failure of independent contractor to post outside the booth visible to all: Operator name; operator license number; hours of business.

(1) Civil Penalties:

1st Offense $100 [~~warning~~]
2nd Offense $200
3rd Offense $500

(h) Failure to maintain list of IC's that include the following:

Name of renter; cosmetology license number of the renter; hours of business of the renter.

(1) Civil Penalties:

1st Offense $100 [~~warning~~]
2nd Offense $200
3rd Offense $500

**§89.69. Corporate Ownership of Private Schools or Salons.**

(a) Did not follow Corporate requirements.

(1) Civil Penalties:

1st Offense $75 [~~warning~~]
2nd Offense $100
3rd Offense $200

**§89.72. Curriculum.**

Did not post TCC curriculum.

(1) Civil Penalties:

1st Offense $25 [~~warning~~]
2nd Offense $50
3rd Offense $100

**§89.75. Field Trips.**

Did not follow field trip requirements.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $100
3rd Offense $200

**§83.3. Proper Quarters.**

(a) Failure to keep establishment and work area in a clean, orderly, and sanitary condition.

(1) Civil Penalties:

1st Offense $50
2nd Offense $100
3rd Offense $200

(b) Inadequate floor coverings; Floors improperly maintained; Carpet in work areas; Walls unsanitary; Ceilings unmaintained.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $100
3rd Offense $200

(c) Facility (living/sleeping/dining).

(1) Civil Penalties:

1st Offense $200
2nd Offense $500
3rd Offense $1,000

(d) Stations/drawers/shelves unsanitized.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $75 [~~$50~~]
3rd Offense $100

(e) Rodents, vermin, flies present.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $100 [~~$50~~]
3rd Offense $200 [~~$100~~]

[~~(g) Dryer heads/ filters unsanitary (Refer to §83.9).~~]

**§83.4. Toilet/Bathrooms.**

(a) Toilet facility unsanitary/out of order.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $100 [~~$50~~]
3rd Offense $200 [~~$100~~]

(b) No hot and cold running water/inadequately supplied.

(1) Civil Penalties:

1st Offense $100 [~~warning~~]
2nd Offense $200
3rd Offense $500

(c) Restroom/adjoining used storage.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $100 [~~$50~~]
3rd Offense $200 [~~$100~~]

**§83.5. Waste and Refuse.**

(a) Food/dirty dishes left over.

(1) Civil Penalties:

1st Offense $25 [~~warning~~]
2nd Offense $50 [~~$25~~]
3rd Offense $75 [~~$50~~]

(b) Trash containers not covered.

(1) Civil Penalties:

1st Offense $25 [~~warning~~]
2nd Offense $50 [~~$25~~]
3rd Offense $75 [~~$50~~]

(c) Trash not emptied daily/not kept clean.

(1) Civil Penalties:

1st Offense $25 [~~warning~~]
2nd Offense $50 [~~$25~~]
3rd Offense $75 [~~$50~~]

[~~(d) Disposable items not discarded.~~]

[~~(1) Civil Penalties:~~]

[~~1st Offense warning~~]
[~~2nd Offense $25~~]
[~~3rd Offense $50~~]

**§83.6. Animals in Schools or Establishments.**

Allowed animals in establishment/school.

(1) Civil Penalties:

1st Offense $100
2nd Offense $200
3rd Offense $500

**§83.9. Furniture and Equipment.**

(a) Furniture/equipment/fixtures in an unsanitary condition.

Electrical equipment unsafe/unsanitary.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $75 [~~$50~~]
3rd Offense $100

(b) Broken equipment.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $75 [~~$50~~]
3rd Offense $100

(c) Shampoo bowls unsanitary.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $75 [~~$50~~]
3rd Offense $100

**§83.10. Towels.**

(a) Failure to use clean towels on each client.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $75 [~~$25~~]
3rd Offense $100 [~~$25~~]

(b) Soiled towels properly contained.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $75 [~~$25~~]
3rd Offense $100 [~~$25~~]

(c) Improper laundry procedure.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $75 [~~$25~~]
3rd Offense $100 [~~$25~~]

**§83.11. Haircutting Capes and Shampoo Capes.**

Unsanitary drape used on client; Cape in contact of client's neck; Did not use sanitized towel/neck strip.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $100 [~~$25~~]
3rd Offense $100 [~~$25~~]

**§83.13. Implements, Comb, Brushes, and Rollers.**

(a) Failure to disinfect tools/implements.

(1) Civil Penalties:

1st Offense $100
2nd Offense $200
3rd Offense $500

(b) Cold wave rods not covered.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $75 [~~$25~~]
3rd Offense $100 [~~$25~~]

(c) Failure to disinfect cutting tools. (Refer to §83.14.)

[~~(d) Failure to keep soiled tools/implements in properly labeled receptacle.~~]

(d) [~~(e)~~] Electrical appliances unsanitized.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $75 [~~$25~~]
3rd Offense $100 [~~$25~~]

**§83.14. Failure to Follow Sanitary Disinfectant Procedures.**

(a) Failure to use disinfectant container(s); Failure to use EPA disinfectant; Not following sanitation procedure.

(1) Civil Penalties:

1st Offense $100
2nd Offense $200
3rd Offense $500

(b) Failure to use dry storage container.

(1) Civil Penalties:

1st Offense $100
2nd Offense $200
3rd Offense $500

(d) Failure to dispose articles after use.

(1) Civil Penalties:

1st Offense $100
2nd Offense $200
3rd Offense $500

(e) Failure to wear gloves.

(1) Civil Penalties:

1st Offense $50
2nd Offense $100
3rd Offense $200

(f) Failure to dispose of wax.

(1) Civil Penalties:

1st Offense $50
2nd Offense $100
3rd Offense $200

(g) Failure to clean wax pots.

(1) Civil Penalties:

1st Offense $50
2nd Offense $100
3rd Offense $200

(h) Failure to sanitize headrests and cover with clean towel or sheet.

(1) Civil Penalties:

1st Offense $50
2nd Offense $100
3rd Offense $200

(i) Did not use anti-microbial agent.

(1) Civil Penalties:

1st Offense $50
2nd Offense $100
3rd Offense $200

(j) Failure to Sanitize Whirlpool Footspas (each foot spa).

(1) Civil Penalties:

1st Offense $500
2nd Offense $750
3rd Offense $1,000

**§83.17. Prohibited Medical Practices.**

(a) use of prohibited implements.

(1) Civil Penalties:

1st Offense $1000
2nd Offense $1000
3rd Offense $1000

(b) Removal mole/blemish.

(1) Civil Penalties:

1st Offense $1,000
2nd Offense $1,000
3rd Offense $1,000

This commission does not recommend the use of Methylmethacrylate monomer

**§83.23. Personal Hygiene.**

(a) Did not wash hands before servicing client.

(1) Civil Penalties:

1st Offense $25 [~~warning~~]
2nd Offense $50 [~~$25~~]
3rd Offense $75 [~~$25~~]

(b) Clothes, uniform unsanitary.

(1) Civil Penalties:

1st Offense $25 [~~warning~~]
2nd Offense $50 [~~$25~~]
3rd Offense $75 [~~$25~~]

**§83.24. Maids or Other Unlicensed Persons.**

Maids/assistants providing service student providing services.

(1) Civil Penalties:

1st Offense $500
2nd Offense $1,000
3rd Offense $1,000

**§83.25. Arresting Bleeding.**

(a) Did not use sanitized gauze or cotton to arrest bleeding.

(1) Civil Penalties:

1st Offense $100
2nd Offense $300
3rd Offense $500

(b) Used lump alum or styptic pencil to arrest bleeding.

(1) Civil Penalties:

1st Offense $100
2nd Offense $300
3rd Offense $500

(c) Failure to follow proper blood spill procedures.

(1) Civil Penalties:

1st Offense $100
2nd Offense $200
3rd Offense $500

**§83.26. Hair Goods and Related Equipment.**

(a) Soiled hairpieces not contained.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $75 [~~$50~~]
3rd Offense $100

(b) Wig blocks unsanitary.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $75 [~~$50~~]
3rd Offense $100

**§83.27. Dispensary and Storage Area.**

Dispensary/storage unsanitary.

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $75 [~~$50~~]
3rd Offense $100

**§83.29. Shirts and Shoes Required.**

(No fine necessary)

**§83.30. Proper Labeling.**

Failure to properly label all products and comply with OSHA or maintain MSDS (Material Safety Data Sheets).

(1) Civil Penalties:

1st Offense $50 [~~warning~~]
2nd Offense $100
3rd Offense $200

Figure: 43 TAC §25.22(a)(3)(B)

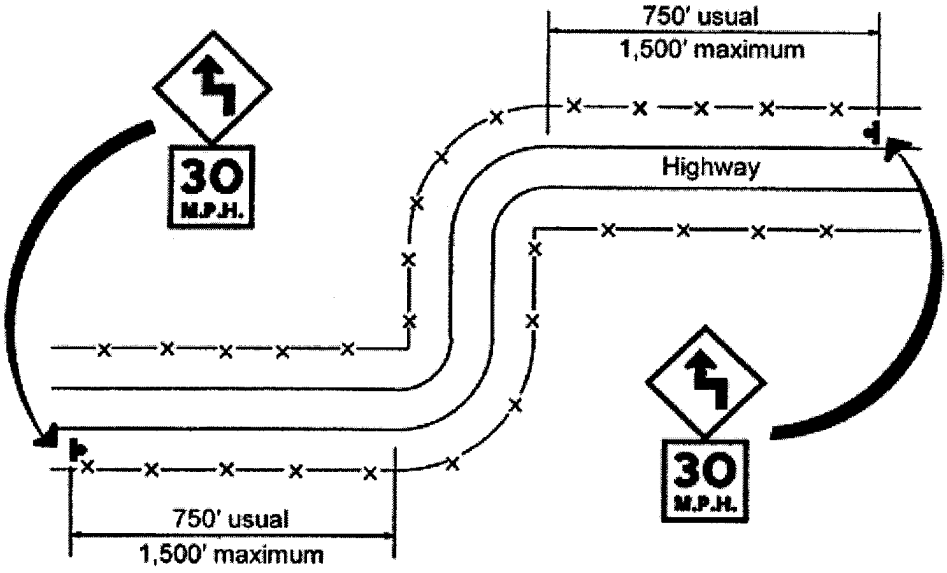



Figure 1: *Typical applications of warning signs with advisory speeds.*
*NOTE: Distances shown are from the point of curvature.*

Figure: 43 TAC §25.22(b)(5)(D)

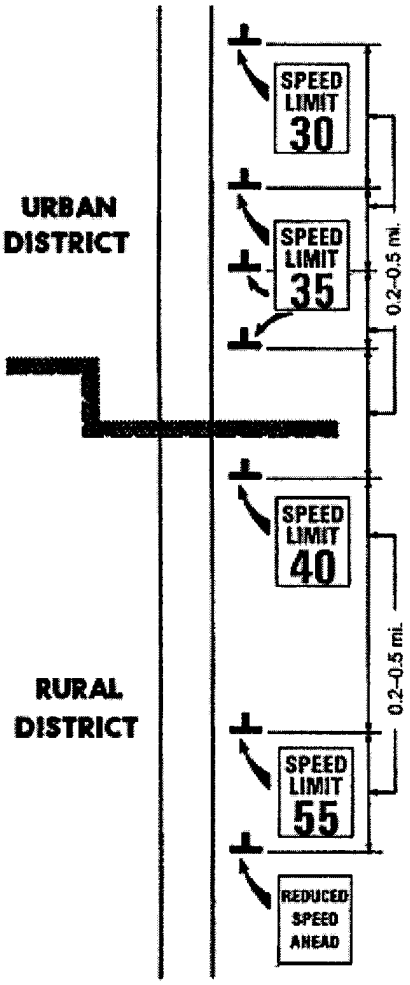



Figure 2: *Example regulatory speed zone application showing spacing of signs transitioning from rural district to urban district and within the urban district.*

Figure: 43 TAC §25.22(c)(6)(D)

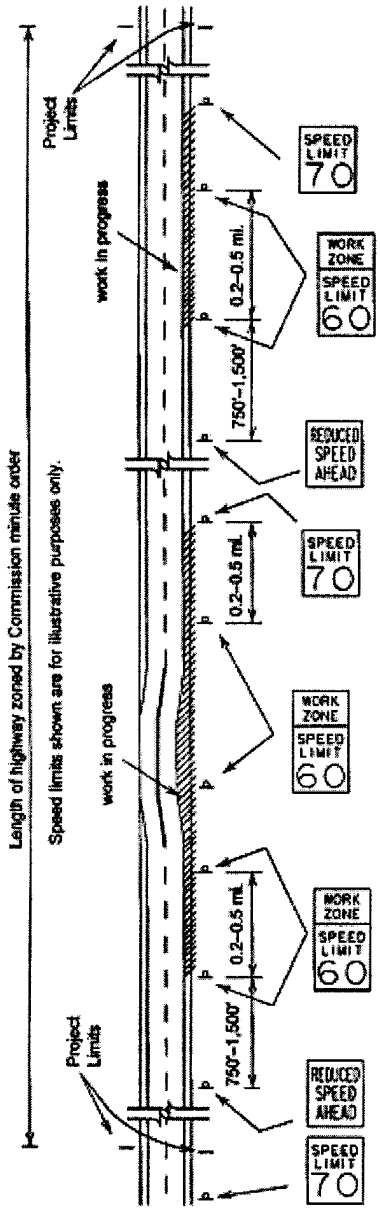



Figure 3: *Typical construction speed zone.*

Figure: 43 TAC §25.24(a)

**Who Sets Speed Zones on the State Highway System, Including Turnpikes under the Department's Authority**

| If the speed zone is | Then it is established by |
|---|---|
| outside a city | commission minute order. |
| inside a city and less than or equal to 60 miles per hour | city ordinance or resolution or commission minute order. |
| inside a city and is greater than 60 miles per hour | commission minute order. |

Figure: 43 TAC §25.24(b)

**Who Sets Speed Zones on Turnpikes under an RMA's Authority**

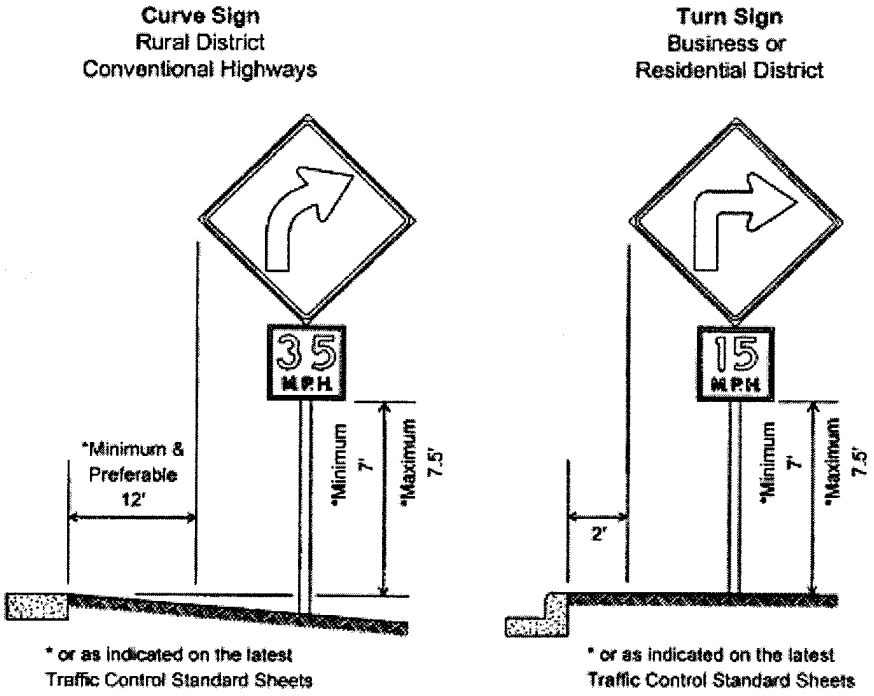
| If the speed zone is | Then it is established by |
|---|---|
| outside a city | RMA order. |
| inside a city and less than or equal to 60 miles per hour | city ordinance or RMA order. |
| inside a city and is greater than 60 miles per hour | RMA order. |

Figure: 43 TAC §25.24(c)

**Who Sets Speed Zones on Turnpikes under an RTA's Authority**

| If the speed zone is | Then it is established by |
|---|---|
| outside a city | RTA order. |
| inside a city and less than or equal to 60 miles per hour | city ordinance or RTA order. |
| inside a city and is greater than 60 miles per hour | RTA order. |

Figure 1: 43 TAC §25.25(a)(2)(C)



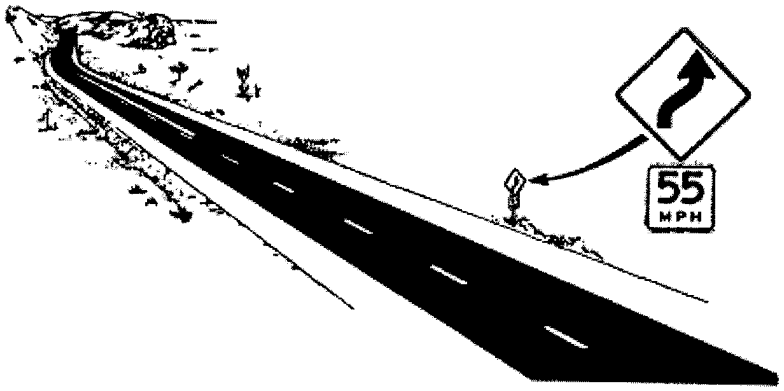




Figure 1: Typical height and location of warning and advisory speed signs.

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Texas Department of Agriculture

Notice of Public Hearing

In accordance with the Texas Agriculture Code, §74.113, the Texas Department of Agriculture (the department) will hold a public hearing to take public comment on a proposed boll weevil eradication program assessment for the Lower Rio Grande Valley Boll Weevil Eradication Zone. The hearing will be held on Wednesday, September 15, 2004, beginning at 1:00 p.m., at Hoblitzelle Auditorium, Texas A&M University Agricultural Research & Extension Center, 2401 East Highway 83, Weslaco, Texas.

For more information, please contact Brian Murray, Special Assistant for Producer Relations, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, (512) 463-7593.

TRD-200405418
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: August 27, 2004

♦ ♦ ♦

## Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of August 19, 2004, through August 26, 2004. The public comment period for these projects will close at 5:00 p.m. on October 1, 2004.

FEDERAL AGENCY ACTIONS:

**Applicant: Port Pelican LLC.**; Location: The project is located within the McDermott International facilities on Harbor Island, west of State Highway (SH) 361, north of the city of Port Aransas, and adjacent to the Corpus Christi Ship Channel (CCSC) in Corpus Christi Bay, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Aransas, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 689000; Northing: 3081500. The applicant proposes to perform mitigation at a site located to the west of the intersection of Business SH 35 and 16th Street, 1.5 miles south and west of Rockport, Aransas County, Texas. The mitigation site can be located on the U.S.G.S. quadrangle map entitled: Estes, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting 689000; Northing: 3097900. Project Description: The applicant proposes to construct two gravity-based structures (GBS's) to be used in a liquefied natural gas facility at a deepwater port off the Louisiana coast. The GBS's would be constructed in a dry dock (graving dock) excavated on the site. Approximately 2.6 million cubic yards of material would be excavated mechanically to create the 35-acre graving dock facility with a depth of 50 feet below mean sea level. The material would be transported to the Port of Corpus Christi Authority Placement Area No. 4 (PA 4) and a portion of the material would be used to raise levees around the perimeter of PA 4. Construction of a graving dock gate would involve the placement of fill into approximately 1.3 acres of shallow water habitat (water depth less than - 4 feet mean low tide (MLT)) to an approximate 25-foot fill depth with sheet pilings installed to avoid the sloughing of any material into the bay. An additional 0.59 acre of jurisdictional wetland, consisting of 0.06 acre of Spartina alterniflora emergent marsh and 0.53 acre of upper salt marsh, would also be impacted by the construction of the proposed graving dock gate. When construction of the GBS's nears completion, a hydraulic dredge would be used to dredge a channel from the CCSC to the graving dock gate. The channel would vary in width from 450 feet near the gate to 1,050 feet at its junction with the CCSC, and would be approximately 1,800 feet in length. Approximately 27 acres of open water habitat (greater than - 4 feet MLT) would be impacted by the proposed dredging. This channel would be dredged to a depth of -50 feet MLT. The graving dock facility would then be flooded, the sheet piles in the gate would be removed, and the earthen gate would be excavated hydraulically. Approximately 1.7 million cubic yards of material would be dredged out of the channel and the gate area and placed in PA 4. The GBS's would be floated out of the graving dock and then towed through the CCSC and out into the Gulf of Mexico. Following GBS's floatout operations the graving dock would remain flooded and open to the channel. As compensation for the impacts to 1.89 acres of jurisdictional waters and wetlands, the applicant proposes to create and enhance coastal marsh habitat at a site located to the north of the project site. CCC Project No.: 04-0274-F1; Type of Application: U.S.A.C.E. permit application #23434 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and Section 404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

**Applicant: Dinosaur Oil and Gas**; Location: The project is located in wetlands adjacent to a man-made canal, near the intersection of Stewart Road and Spanish Main Boulevard, within the Spanish Grant subdivision in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Lake Como, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 313349; Northing: 3234411. Project Description: The applicant proposes to fill 2.28 acres of jurisdictional wetlands for the development of seven 1-acre lots within an existing residential housing community. The wetlands to be impacted are primarily mid to high marsh dominated by saltgrass (Distichlis spicata), bushy sea-oxeye daisy (Borrichia frutescens), hightide bush (Iva frutescens), Gulf cordgrass (Spartina spartinae), and marshhay cordgrass (Spartina

patens). The lots are to be filled to an elevation of 5 feet above mean sea level (MSL) in preparation of the lots for construction. The proposal includes the construction of 720 feet of concrete bulkhead along the shoreline and an additional 130 feet of concrete bulkhead at the west end of the canal. In addition, the applicant proposes to build a T-head pier and boat dock on each lot at the option of the potential buyer. The piers will extend 40 feet from the bulkhead with a terminal covered boathouse that is 20 feet by 30 feet. CCC Project No.: 04-0279-F1; Type of Application: U.S.A.C.E. permit application #22709 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and Section 404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Gwen Spriggs, Council Administrative Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or gwen.spriggs@glo.state.tx.us. Comments should be sent to Ms. Spriggs at the above address or by fax at 512/475-0680.

TRD-200405516
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: September 1, 2004

♦ ♦ ♦

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003, 303.005, 303.008, 303.009, 304.003, and 346.101. Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and 303.009 for the period of 09/06/04 - 09/12/04 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and 303.009 for the period of 09/06/04 - 09/12/04 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by Sec. 303.005 and 303.009[3]for the period of 09/01/04 - 09/30/04 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The monthly ceiling as prescribed by Sec. 303.005 and 303.009 for the period of 09/01/04 - 09/30/04 is 18% for Commercial over $250,000.

The standard quarterly rate as prescribed by Sec. 303.008 and 303.009 for the period of 10/01/04 - 12/31/04 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The standard quarterly rate as prescribed by Sec. 303.008 and 303.009 for the period of 10/01/04 - 12/31/04 is 18% for Commercial over $250,000.

The retail credit card quarterly rate as prescribed by Sec. 303.009 [1]for the period of 10/01/04 - 12/31/04 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The lender credit card quarterly rate as prescribed by Sec. 346.101 Tex. Fin. Code[1]for the period of 10/01/04 - 12/31/04 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The standard annual rate as prescribed by Sec. 303.008 and 303.009 [4]for the period of 10/01/04 - 12/31/04 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The standard annual rate as prescribed by Sec. 303.008 and 303.009 for the period of 10/01/04 - 12/31/04 is 18% for Commercial over $250,000.

The retail credit card annual rate as prescribed by Sec. 303.009[1]for the period of 10/01/04 - 12/31/04 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 09/01/04 - 09/30/04 is 5% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed Sec. 304.003 for the period of 09/01/04 - 09/30/04 s 5% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

[4]Only for open-end credit as defined in Sec. 301.002(14), Tex. Fin. Code.

TRD-200405506
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 31, 2004

♦ ♦ ♦

## Texas Commission on Environmental Quality

### Notice of a Public Hearing on Proposed Revisions to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive comments concerning seven Agreed Orders with six companies in the Beaumont-Port Arthur (BPA) ozone nonattainment area, and a corresponding revision to the state implementation plan (SIP), under the requirements of Title 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) regulations concerning SIPs.

The current SIP revision incorporates certain voluntary emissions reductions, air monitoring improvements, and other actions which six companies in the BPA area have agreed to make. These voluntary measures are being undertaken to provide additional benefits to air quality in BPA, and represent the culmination of negotiations with certain environmental organizations and EPA. The commission is entering into Agreed Orders with each of the companies to make the voluntary measures enforceable.

A public hearing on this proposal will be held in Beaumont, Texas on October 7, 2004 at 7:00 p.m. in the Swan Room, South East Texas Regional Planning Commission, 2210 Eastex Freeway. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

Comments may be submitted to Mike Magee, MC 206, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-5687. All comments should reference Project Number 2004-084-SIP-NR, and must be received by 5:00 p.m., October 11, 2004. For further information, please contact Mike Magee at (512) 239-1511.

TRD-200405458
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: August 30, 2004

♦ ♦ ♦

## Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 11, 2004**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 11, 2004**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Clinton Rhodes dba H2O On Tap Water Hauler; DOCKET NUMBER: 2003- 0043-PWS-E; TCEQ ID NUMBERS: 0270101 and RN102320330; LOCATION: 1401 County Road 342C, Marble Falls, Burnet County, Texas; TYPE OF FACILITY: potable drinking water supply; RULES VIOLATED: 30 TAC §290.44(i)(2)(J), by failing to collect bacteriological samples; PENALTY: $1,400; STAFF ATTORNEY: Benjamin Joseph de Leon, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(2) COMPANY: Craig Adams dba Hardy Stop (Formerly Hopper Food Corner); DOCKET NUMBER: 2003-1388-PST-E; TCEQ ID NUMBERS: 4720 and RN103017323; LOCATION: 1303 Hopper Road, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(c), by failing to conduct inventory control; 30 TAC §334.50(b)(1)(A), (b)(2), (b)(2)(A)(i)(III), and (d)(1)(B)(ii), and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) system for releases; 30 TAC §115.246(1), (3) - (6), and (7)(A), and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage II vapor recovery records and to make immediately available for review upon request by authorized representatives maintenance logs for all repairs and/or replacements, proof of attendance and completion of Stage II training, and results of testing conducted at the station; 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the required components of the Stage II system in proper operating condition and free of defects; 30 TAC §115.242(4) and THSC, §382.085(b), by failing to maintain the Stage II system free of leaks; and 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each dispenser equipped with a Stage II system; PENALTY: $13,050; STAFF ATTORNEY: Deborah A. Bynum, Litigation Division, MC 175, (512) 239-1976; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Guadalupe Trevino dba GT Motor & Transmission Shop; DOCKET NUMBER: 2003-1228-WQ-E; TCEQ ID NUMBERS: R15STW0018 and RN102840279; LOCATION: 1241 East Expressway 83, San Benito, Cameron County, Texas; TYPE OF FACILITY: vehicle dismantling and repair shop; RULES VIOLATED: 30 TAC §281.25(a)(4), 40 Code of Federal Regulations (CFR), §122.26(a)(ii), and Texas Pollutant Discharge Elimination System General Permit Number TXR05000, by failing to obtain authorization to discharge storm water associated with industrial activity to waters in the state through an individual permit or by qualifying for the condition, no exposure certification for exclusion; PENALTY: $11,550; STAFF ATTORNEY: Lindsay Andrus, Litigation Division, MC 175, (512) 239-4761; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(4) COMPANY: Jan Enterprises, Inc., dba Nikus Lucky Lady; DOCKET NUMBER: 2003-0851- PST-E; TCEQ ID NUMBERS: 0046487 and RN100539717; LOCATION: 6728 North Davis Boulevard, North Richland Hills, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the USTs; PENALTY: $3,200; STAFF ATTORNEY: James Biggins, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: John Roof dba Roof Dairy; DOCKET NUMBER: 2001-0236-AGR-E; TCEQ ID NUMBER: none; LOCATION: 2357 North County Road 1226, Godley, Johnson County, Texas; TYPE OF FACILITY: dairy; RULES VIOLATED: 30 TAC §321.39(f)(18), by failing to prohibit the entry of animals into the waste storage ponds and failing to prevent the growing of trees on the embankment of the waste

storage pond; and Default Order Docket Number 1998-0248-AGR-E, by failing to pay the administrative penalties; PENALTY: $4,500; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Mayfield McCraw dba McCraw Materials; DOCKET NUMBER: 2004-1050- MLM-E; TCEQ ID NUMBER: RN103002788; LOCATION: Route 1, Box 192, Riverview Road, on the northwest side of County Road 2135, four miles northeast of Telephone, Fannin County, Texas; TYPE OF FACILITY: sand and gravel production plant; RULES VIOLATED: 30 TAC §116.115(c) and THSC, §382.085(b), and Permit Number 45246, Special Condition 3.C., by failing to shut down a non-permitted operation; 30 TAC §111.201 and THSC, §382.085(b), by allowing outdoor burning at the sand and gravel operations site; and 30 TAC §335.4, by causing, allowing, or permitting the collection, handling, storage, processing, or disposal of industrial solid waste or municipal hazardous waste on his property in such a manner so as to cause the discharge or imminent threat of discharge of industrial solid waste or municipal hazardous waste, into or adjacent to, the waters in the state without obtaining specific authorization for such a discharge from the TCEQ; PENALTY: $4,500; STAFF ATTORNEY: James Biggins, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Robert (Bobby) Barton McCans, Jr. dba Aaron Irrigation and Landscaping Company; DOCKET NUMBER: 2002-0695-LII-E; TCEQ ID NUMBERS: 5376 and RN103457198; LOCATION: 1417 Broke Spoke Court, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: landscape irrigation systems; RULES VIOLATED: 30 TAC §344.4(a) and §30.125, TWC, §37.003 and Texas Occupational Code, § 1903.251 (formerly located at TWC § 34.007(a)), and TWC §37.006 (formerly located at TWC. § 34.009), by installing landscape irrigation systems without a valid license; PENALTY: $3,125; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Texas Thermowell, Inc.; DOCKET NUMBER: 2003-1484-WQ-E; TCEQ ID NUMBER: RN100554757; LOCATION: 6575 Tram Road, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: thermowell fabrication business; RULES VIOLATED: 30 TAC §281.25(a)(4) and §305.42(a), TWC, §26.121(a), and 40 CFR §122.26(c), by failing to obtain authorization for the discharge of storm water related to industrial activity; PENALTY: $5,250; STAFF ATTORNEY: Wendy Cooper, Litigation Division, MC R-4, (817) 588-5867; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: Triple R Foods, Inc. dba PDQ Foods 102; DOCKET NUMBER: 2003-1073-PST- E; TCEQ ID NUMBERS: 15514 and RN101562569; LOCATION: 1216 West Northwest Highway, Grapevine, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: $2,850; STAFF ATTORNEY: Lindsay Andrus, Litigation Division, MC 175, (512) 239- 4761; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200405507
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 31, 2004

♦ ♦ ♦

## Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 11, 2004**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 11, 2004**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: Carroll Pratt dba Whispering Pines Mobile Home Park; DOCKET NUMBER: 2003-0672-PWS-E; TCEQ ID NUMBERS: 5966, 0340027 and RN102691607; LOCATION: 20137 United States Highway 59 North, Queen City, Cass County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(f)(3) and Texas Health and Safety Code (THSC), §341.031(a), by exceeding the maximum contaminant level for total coliform bacteria; PENALTY: $863; STAFF ATTORNEY: Barbara J. Watson, Litigation Division, MC 175, (512) 239-2044; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535- 5100.

(2) COMPANY: City of Roscoe; DOCKET NUMBER: 2003-0293-PWS-E; TCEQ ID NUMBERS: 1770001 and RN101430924; LOCATION: 115 Cypress, Roscoe, Nolan County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.104(b) and THSC, §341.031(a), by failing to meet minimum drinking water standards; 30 TAC §290.46(e)(3)(C) and THSC, §341.033(a), by failing to employ a properly certified operator with a class "C" certificate; 30 TAC §290.41(c)(3)(K) and (4)(B) and THSC, §341.036, by failing to provide a screened vent on the wells, failing to seal the well head with gaskets or a pliable crack-resistant caulking compound and failing to properly seal the electrical cable and the depth finder with gaskets or

pliable crack-resistant caulking compound; 30 TAC §290.41(c)(3)(J) and THSC, §341.036, by failing to provide concrete sealing blocks that extend at least three feet from the well casing in all directions; 30 TAC §290.41(c)(3)(O), by failing to provide an intruder resistant fence; 30 TAC §290.46(m), by failing to provide maintenance and housekeeping to the pump stations and water storage facilities; and 30 TAC §290.43(c)(3) and THSC, §341.036, by failing to provide proper overflow on water storage facilities; PENALTY: $3,625; STAFF ATTORNEY: Benjamin Joseph de Leon, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(3) COMPANY: Deer Creek Ranch, Inc. dba Deer Creek Water Co.; DOCKET NUMBER: 2002- 0773-PWS-E; TCEQ ID NUMBERS: 2270049 and RN100822527; LOCATION: east of Ranch-to- Market Road 3238 and 6.5 miles south of State Highway 71, Travis County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.118 and THSC, §341.031(a), by failing to provide water that meets the commission's secondary constituent levels for iron, chloride, sulfate, and total dissolved solids; 30 TAC §290.46(f)(2), by failing to maintain documentation of annual tank inspections for the ground storage tank and pressure tank; 30 TAC §290.46(f)(3)(E)(iv), by failing to maintain copies of customer service inspections for at least ten years; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system; 30 TAC §290.43(c)(3), by failing to modify the overflow pipe flap valve assembly on the ground storage tank to provide no more than 1/16 inch gap; 30 TAC §290.110(d)(3)(C)(i), by failing to use an approved method for measuring the free chorine residual; 30 TAC §290.43(e), by failing to provide an intruder-resistant fence; 30 TAC §290.45(b)(1)(C)(i), by failing to provide a minimum well capacity of 0.6 gallons per minute per service connection; 30 TAC §290.46(u), by failing to plug abandoned public water supply wells owned by the facility; and 30 TAC §290.46(e)(4)(A), by failing to operate the facility under the direct supervision of a competent water works operator holding a class "D" or higher operator's certificate; PENALTY: $14,240; STAFF ATTORNEY: Lindsay Andrus, Litigation Division, MC 175, (512) 239-4761; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(4) COMPANY: Ken R. Sloan dba Tri-County Septic; DOCKET NUMBER: 2004-0039-OSI-E; TCEQ ID NUMBERS: OS0001529 and RN103690533; LOCATION: Route 1, Box 198, Bogata, Red River County, Texas; TYPE OF FACILITY: on-site sewage installation and repair business; RULES VIOLATED: 30 TAC §285.61(4) and THSC, §366.051(c), by installing an on-site sewage facility (OSSF) without having first obtained documentation that the owner or owner's agent had the permitting authority's authorization to construct; PENALTY: $250; STAFF ATTORNEY: Barbara J. Watson, Litigation Division, MC 175, (512) 239-2044; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(5) COMPANY: Lucky Lady Oil Company; DOCKET NUMBER: 2004-0017-PST-E; TCEQ ID NUMBERS: 11919 and RN100539667; LOCATION: (Harris Methodist Hospital) 1301 Pennsylvania Avenue, Fort Worth, and (Nick's Corner Mart 2) 2300 South Collins, Arlington, Tarrant County, Texas; TYPE OF FACILITY: fuel distribution; RULES VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to observe a valid, posted TCEQ-issued delivery certificate prior to delivering fuel to the sites; PENALTY: $2,480; STAFF ATTORNEY: Barbara J. Watson, Litigation Division, MC 175, (512) 239-2044; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Quiroga Trucking, L.L.C.; DOCKET NUMBER: 2004-0472-PST-E; TCEQ ID NUMBERS: 14309 and RN103765962; LOCATION: 152 Camino de Arroyo, Van Vleck, Matagorda County, Texas; TYPE OF FACILITY: fuel distributor; RULES VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owners or operators of the underground storage tanks (USTs) had a valid, current delivery certificate prior to depositing a regulated substance into the USTs; PENALTY: $2,400; STAFF ATTORNEY: Barbara J. Watson, Litigation Division, MC 175, (512) 239- 2044; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Tooter A. H. Schulze; DOCKET NUMBER: 2003-1545-OSS-E; TCEQ ID NUMBERS: OS2711 and RN103388203; LOCATION: Post Office Box 53, Junction, Kimble County, Texas; TYPE OF FACILITY: on-site sewage facility; RULES VIOLATED: 30 TAC §285.50(g)(2), by working as an OSSF installer, while at the same time acting in the capacity of a commissioner for Kimble County; PENALTY: $2,188; STAFF ATTORNEY: Christina Mann, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(8) COMPANY: Woodmark Utilities, Inc.; DOCKET NUMBER: 2003-0640-MWD-E; TCEQ ID NUMBERS: 13168-001 and RN101511400; LOCATION: south of Farm-to-Market Road (FM) 346, approximately 1.2 miles west of the intersection of FM 346 and United States Highway 69, south of Tyler, Smith County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1); Texas Pollutant Discharge Elimination System Permit Number 13168-001, Interim II Effluent Limitations and Monitoring Requirements; and TWC, §26.121(a), by failing to comply with the permit limits for total suspended solids, ammonia nitrogen, and total chlorine residual; PENALTY: $4,800; STAFF ATTORNEY: Ashley Kever, Litigation Division, MC 175, (512) 239-2987; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

TRD-200405508
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 31, 2004

♦ ♦ ♦

## Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 11, 2004**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 11, 2004**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: Aegon Direct Marketing Services, Inc.; DOCKET NUMBER: 2004-0624-PST- E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 071356; LOCATION: Plano, Collin County, Texas; TYPE OF FACILITY: marketing business with a gasoline dispensing station; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(a) and (c)(1), by failing to provide a method of release detection; 30 TAC §334.10(b), by failing to request underground storage tank (UST) records; and 30 TAC §334.8(c)(5)(B)(ii) and the Code, §26.346(a), by failing to ensure that a delivery certificate is renewed; PENALTY: $4,800; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Ali Investments, Inc. dba Hawks Pantry 3; DOCKET NUMBER: 2004-0431- PST-E; IDENTIFIER: PST Facility Identification Number 011375; LOCATION: Alvarado, Johnson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor for releases at a frequency of at least once every month; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Rodrigo Cantu dba Cantu's Gas and Oil Express; DOCKET NUMBER: 2004- 0967-PST-E; IDENTIFIER: PST Facility Identification Number 45822; LOCATION: Port Isabel, Cameron County, Texas; TYPE OF FACILITY: small business with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial responsibility; and 30 TAC §334.8(c)(5)(A)(iii), by failing to ensure that a valid, current delivery certificate is posted at the facility; PENALTY: $2,720; ENFORCEMENT COORDINATOR: Keith Fleming, (512) 239-0560; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(4) COMPANY: Car Spa Inc. dba Car Spa Car Wash; DOCKET NUMBER: 2004-0343-PST-E; IDENTIFIER: PST Facility Identification Number 72494; LOCATION: Dallas, Collin County, Texas; TYPE OF FACILITY: car wash; RULE VIOLATED: 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain the Stage II records on site; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to conduct the full Stage II vapor recovery system (VRS) testing; 30 TAC §115.244(1) and THSC, §382.085(b), by failing to conduct daily inspections of the Stage II VRS; and 30 TAC §115.242(3)(J), by failing to conduct monthly inspections of the components; PENALTY: $7,200; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Chevron Pipe Line Company; DOCKET NUMBER: 2004-0592-AIR-E; IDENTIFIER: General Operating Permit Number O-01307, Air Permit Number 49038, Air Account Number SG-0033-L, and Regulated Entity Number (RN) 100215128; LOCATION: Hermleigh, Scurry County, Texas; TYPE OF FACILITY: crude oil pipeline station; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), Air Permit Number 49038, and General Operating Permit Number O-01307, by failing to meet the volatile organic compound (VOC) emission limits; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(6) COMPANY: Chevron Pipe Line Company; DOCKET NUMBER: 2004-0767-AIR-E; IDENTIFIER: General Operating Permit Number 515, Air Permit Number 49031, Air Account Number ML-0244-C, and RN100214824; LOCATION: Midland, Midland County, Texas; TYPE OF FACILITY: crude oil breakout station; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), Air Permit Number 49031, General Operating Permit Number 515, and THSC, §382.085(b), by failing to meet the VOC emission limits and by failing to install secondary seals on the internal floating roofs; PENALTY: $7,920; ENFORCEMENT COORDINATOR: Kelli Bruce, (512) 239-7099; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(7) COMPANY: William E. Watson dba Corner Shell; DOCKET NUMBER: 2004-0731-PST- E; IDENTIFIER: PST Facility Identification Number 45424, RN101936136; LOCATION: Livingston, Polk County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to have a corrosion specialist or technician inspect and test corrosion protection system within three - six months after installation; 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to provide proper release detection for UST systems and by failing to reconcile inventory control records; PENALTY: $5,400; ENFORCEMENT COORDINATOR: Kensley Greuter, (512) 239-2520; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: Degussa Engineered Carbons, L.P.; DOCKET NUMBER: 2004-0729-AIR-E; IDENTIFIER: Air Account Number OC-0020-R, RN100209386; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: carbon black manufacturing plant; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to prevent the unauthorized discharge of one or more air contaminants or combination thereof; 30 TAC §101.201(b)(4) and (8) and THSC, §382.085(b), by failing to correctly create a final record of a non-reportable emissions event; and THSC, §382.085(a), by failing to prevent the unauthorized emission of an air contaminant; PENALTY: $4,550; ENFORCEMENT COORDINATOR: John Barry, (409) 898- 3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: Dorsett Ditching Inc. dba Dorsett 221 Truck Stop; DOCKET NUMBER: 2004- 0446-PST-E; IDENTIFIER: PST Facility Identification Number 00870, RN102029758; LOCATION: Buda, Hays County, Texas; TYPE OF FACILITY: truck stop with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(2)(C), by failing to ensure that the rectifier and other components of the automatic tank gauge and inventory control system are operating properly; and 30 TAC §334.50(a)(1)(A), by failing to provide a method, or combination of methods, of release detection; PENALTY: $5,200; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339- 2929.

(10) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2004-0458-AIR-E; IDENTIFIER: RN103773206; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: polymer

manufacturing; RULE VIOLATED: 30 TAC §115.115(c), Permit Number 4157A, and THSC, §382.085(b), by failing to route waste gas from point sources containing VOCs to the flare or obtain an exception and by failing to operate the polyethylene production process with a required emergency particulate emission control system; and 30 TAC §115.354(1)(B) and THSC, §382.085(b), by failing to conduct yearly monitoring of 136 difficult-to-monitor valves; and THSC, §382.085(a), by failing to prevent the unauthorized emissions from the polyethylene unit; PENALTY: $15,470; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: H. Muehlstein & Company, Inc.; DOCKET NUMBER: 2003-1373-IWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 02294, RN100692144; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: plastics compounding and resin; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 02294, and the Code, §26.121(a), by failing to meet the permitted effluent limits for pH, chemical oxygen demand, ammonia nitrogen, and total suspended solids (TSS); PENALTY: $8,500; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: K & S Trucks, Ltd.; DOCKET NUMBER: 2004-0626-PST-E; IDENTIFIER: RN104133236; LOCATION: McCamey, Upton County, Texas; TYPE OF FACILITY: brine and fresh water hauling; RULE VIOLATED: 30 TAC §334.401(a) and (b), §334.55(a)(2) and (3), by failing to obtain a registered UST contractor and licensed on-site supervisor; and 30 TAC §334.6(b)(2) and (c), by failing to submit the required construction notification; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(13) COMPANY: Phat Truong dba L & P Food Market; DOCKET NUMBER: 2004-0676-PST- E; IDENTIFIER: PST Facility Identification Number 9329; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), (2)(A)(i)(III) and (ii), and the Code, §26.3475(a) and (c)(1), by failing to monitor a UST system for releases, by failing to test the line leak detector, and by failing to test or monitor each pressurized line for releases; and 30 TAC §334.48(c), by failing to conduct inventory control procedures; PENALTY: $2,340; ENFORCEMENT COORDINATOR: Larry King, (512) 239-7037; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703- 1892, (409) 898-3838.

(14) COMPANY: City of Lyford; DOCKET NUMBER: 2004-1012-PWS-E; IDENTIFIER: Public Water Supply Number 2450003, RN101422657; LOCATION: Lyford, Willacy County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(5) and THSC, §341.0315(c), by allegedly exceeding the maximum contaminant level (MCL) of 0.060 milligrams per liter (mg/L) for haloacetic acid; PENALTY: $200; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550- 5247, (956) 425-6010.

(15) COMPANY: Maxey Road Water Supply Corporation; DOCKET NUMBER: 2003-1421- WQ-E; IDENTIFIER: TPDES Permit Number 0013503-001; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 0013503-001, and the Code, §26.121(a), by failing to comply with the permit limit for TSS, pH, and dissolved oxygen (DO); PENALTY: $8,600; ENFORCEMENT COORDINATOR: John Schildwachter, (512) 239-2355; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: City of Meridian; DOCKET NUMBER: 2004-0666-PWS-E; IDENTIFIER: PWS Number 0180002, RN101402543; LOCATION: Meridian, Bosque County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f)(2), by failing to make the facility's operating records accessible during the inspection; 30 TAC §290.41(c)(3)(B), by failing to provide a well casing; and 30 TAC §290.44(h)(1)(A), by failing to install back flow prevention assemblies or an air gap at all residences or establishments; PENALTY: $735; ENFORCEMENT COORDINATOR: Cari Bing, (512) 239-1445; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: Nisseki Chemical Texas, Inc.; DOCKET NUMBER: 2004-0550-AIR-E; IDENTIFIER: Air Account Number HG-3626-Q; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §101.20(1) and (2), §116.115(c), Air Permit Number 19624, and THSC, §382.085(b), by failing to approve an air stripping system or equivalent and by failing to test the FL-2 flare to demonstrate compliance; PENALTY: $5,520; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Noorani Petroleum, Inc. dba Panther Stop dba Broncos Country Corner; DOCKET NUMBER: 2004-0403-PST-E; IDENTIFIER: PST Facility Identification Numbers 57606 and 50129, RN101732493 and RN101733780; LOCATION: Dayton and Liberty, Liberty County, Texas; TYPE OF FACILITY: convenience stores with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(3), (5), and (7)(A), and THSC, §382.085(b), by failing to maintain Stage II records; 30 TAC §115.242(3)(B) and (M) and THSC, §382.085(b), by failing to maintain the Stage II VRS; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one facility representative and all employees receive training; 30 TAC §12.1 and §334.22, by failing to pay late fees; 30 TAC §115.244(3) and THSC, §382.085(b), by failing to conduct monthly inspections of the Stage II pressure/vacuum relief valves, vapor check valves, and Stage I dry break; 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions on the front of each dispenser; and 30 TAC §334.8(c)(5)(A)(iii), by failing to ensure that a valid, current delivery certificate was posted at the facility; PENALTY: $16,275; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Occidental Permian Ltd.; DOCKET NUMBER: 2004-0796-AIR-E; IDENTIFIER: Air Account Number UB-0058-G, RN100226737; LOCATION: McCamey, Upton County, Texas; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §106.512(2)(C)(ii) and §116.110(a)(4) and THSC, §382.085(b), by failing to document, by recorded measurement, the nitrogen oxide and carbon monoxide emissions; 30 TAC §122.145(2)(C) and THSC, §382.085(b), by failing to report a Title V deviation; and 30 TAC §21.4 and §290.51(a)(3), the Code, §5.702 and §26.0135(h), and THSC, §341.041, by failing to pay fees; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Larry King, (512) 239-7037; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(20) COMPANY: Palo Gaucho, Inc.; DOCKET NUMBER: 2004-0478-MWD-E; IDENTIFIER: TPDES Permit Number 11432-001, RN101521821; LOCATION: near Pearland, Sabine

County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11432-001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for TSS, 5-day biochemical oxygen demand, DO, and Chlorine; PENALTY: $3,300; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(21) COMPANY: Jim Strong dba Papas Market; DOCKET NUMBER: 2004-0597-PST-E; IDENTIFIER: PST Facility Identification Number 18253; LOCATION: Skidmore, Bee County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor USTs for releases and by failing to monitor the piping of the UST system; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Chad Blevins, (512) 239-6017; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(22) COMPANY: Richard Funderburk dba Riverboat Bend Trailer Park; DOCKET NUMBER: 2004-0654-PWS-E; IDENTIFIER: PWS Number 1460088, RN102693546; LOCATION: Dayton, Liberty County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(A)(i) and THSC, §341.0315(c), by failing to provide a well capacity of 1.5 gallons per minute per connection; 30 TAC §290.(c)(2) and (g), §290.122(c), and THSC, §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis; and 30 TAC §290.51(a)(3), by failing to pay outstanding public health service fees; PENALTY: $998; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: Robbins & Myers Energy Systems L.P.; DOCKET NUMBER: 2004-0681- AIR-E; IDENTIFIER: Air Account Number MQ-0548-Q; LOCATION: Willis, Montgomery County, Texas; TYPE OF FACILITY: oil field equipment manufacturing; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit an annual compliance certification; PENALTY: $1,580; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Rohm and Haas Texas Incorporated; DOCKET NUMBER: 2004-0146-AIR- E; IDENTIFIER: Air Account Number HG-0632-T, RN100223205; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(b)(2)(G), Air Permit Number 751, and THSC, §382.085(b), by failing to comply with the permitted emission rate of 5.65 pounds per hour (lbs/hr) of carbon monoxide and 0.37 lbs/hr of VOCs; PENALTY: $3,240; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767- 3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767- 3500.

(25) COMPANY: Scot Industries Inc.; DOCKET NUMBER: 2003-0416-IHW-E; IDENTIFIER: Solid Waste Registration Number 31275, RN101646479; LOCATION: Lone Star, Morris County, Texas; TYPE OF FACILITY: pipe manufacturing and chrome plating operation; RULE VIOLATED: 30 TAC §335.4, by failing to prevent the discharge of an oily substance; 30 TAC §335.5, by failing to record in the Morris County deed records the on-site landfilling of honing sludge; 30 TAC §335.6(b), by failing to update the notice of registration electronically; 30 TAC §335.9(a)(1), by failing to maintain records regarding the type and amount of waste being disposed of on site; 30 TAC §335.10(b)(22), by failing to include the waste classification code on a manifested shipment of hazardous waste; 30 TAC §335.69(a)(4)(A) and (d)(2), and 40 Code of Federal Regulations (CFR) §265.16(d)(2) and §265.51(a), by failing to maintain a written job description for each position handling hazardous waste, by failing to develop a written contingency plan, and by failing to properly label containers; and 30 TAC §335.474 and THSC, §361.505, by failing to prepare a source reduction and waste minimization plan; PENALTY: $11,016; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(26) COMPANY: Shot Realty Company Inc. dba Atlantic Relocation Systems; DOCKET NUMBER: 2003-0921-PST-E; IDENTIFIER: PST Facility Identification Number 55377, RN101566024; LOCATION: Carrollton, Dallas County, Texas; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(d)(1)(B)(ii) and (iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurements; and 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239-6673; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: Siva Corporation dba K K Food Mart; DOCKET NUMBER: 2003-0756-PST- E; IDENTIFIER: PST Facility Identification Number 33564, RN103731220; LOCATION: San Augustine, San Angustine County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c) and §334.50(d)(1)(B)(ii) and (iii)(I), and the Code, §26.3475(c)(1), by failing to conduct manual or automatic inventory control procedures or record inventory volume measurements; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that release detection equipment or procedures are provided for the UST; and 30 TAC §334.8(c)(5)(C), by failing to label the UST fill tube; PENALTY: $3,672; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(28) COMPANY: Sunoco, Inc. (R&M); DOCKET NUMBER: 2003-0351-AIR-E; IDENTIFIER: RN100524008; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: polymer manufacturing; RULE VIOLATED: 30 TAC §116.115(b)(2)(G) and (c), §101.20(1), Permit Number 3126A, 40 CFR §60.18(c) and §60.562-1(a)(1)(C), and THSC, §382.085(b), by failing to operate the dryer, by failing to properly operate the uninterruptible power system, by failing to conduct the required performance test, by failing to properly test samples, and by failing to maintain the bagfilters system; 30 TAC §111.111(a)(4)(A)(ii) and THSC, §382.085(b), by failing to operate the flare within opacity limitations; and 30 TAC §101.20(1), 40 CFR §60.562-1(a) and THSC, §382.085(b), by failing to demonstrate the claimed exemption status for individual vent streams; PENALTY: $26,790; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: The George R. Brown Partnership, L.P.; DOCKET NUMBER: 2004-0683- AIR-E; IDENTIFIER: Air Account Number FI-0013-T, RN100214873; LOCATION: Teague, Freestone County, Texas; TYPE OF FACILITY: natural gas processing; RULE VIOLATED: 30 TAC §122.145(2)(C) and THSC, §382.085(b), by failing to submit the semi-annual deviation report; and 30 TAC §101.201(a) and §116.115(b)(2)(G) and (c), Air Permit Number 6066, and THSC, §382.085(b), by failing to submit upset reports and by failing to maintain opacity of emissions; PENALTY: $28,050; ENFORCEMENT COORDINATOR: Ronnie Kramer, (806) 353- 9251; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751- 0335.

(30) COMPANY: City of Three Rivers; DOCKET NUMBER: 2004-0933-PWS-E; IDENTIFIER: PWS Number 1490002; LOCATION: Three Rivers, Live Oak County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by exceeding the maximum contaminant level of 0.080 mg/L; PENALTY: $200; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(31) COMPANY: Ber Lengers dba Triple Dutch 2; DOCKET NUMBER: 2004-0594-AGR-E; IDENTIFIER: TPDES Permit Number 02922, RN101528511; LOCATION: Dublin, Erath County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.35(b) and TPDES Permit Number 02922, by failing to include the name of the property owner on the permit; and 30 TAC §321.39(f)(11) and (28)(C) and TPDES Permit Number 02922, by failing to maintain adequate storm water storage capacity and by failing to collect a composite soil sample; PENALTY: $200; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(32) COMPANY: City of Throckmorton; DOCKET NUMBER: 2004-0797-PWS-E; IDENTIFIER: PWS Number 2240001, RN101410553; LOCATION: Throckmorton, Throckmorton County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(b), by failing to provide water that meets the MCL for total trihalomethane; PENALTY: $200; ENFORCEMENT COORDINATOR: Chad Blevins, (512) 239-6017; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(33) COMPANY: Universal Demolishing & Recycling Company Inc.; DOCKET NUMBER: 2004-0357-MSW-E; IDENTIFIER: Municipal Solid Waste (MSW) Unauthorized Site Numbers 455100031 and 455100037, RN102955903 and RN103786679; LOCATION: Pollok, Angelina County, Texas; TYPE OF FACILITY: unauthorized solid waste sites; RULE VIOLATED: 30 TAC §330.5 and §330.32(b), by failing to prevent the disposal of MSW at two unauthorized sites and ensure that all solid waste collected is disposed of only at facilities authorized to accept the type of waste being transported; 30 TAC §324.4(2)(B), by failing to comply with the used oil prohibitions and clean-up of spills; and 30 TAC §324.6 and 40 CFR §279.22(c)(1), by failing to label used oil containers; PENALTY: $11,163; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(34) COMPANY: City of Weslaco; DOCKET NUMBER: 2004-0791-MWD-E; IDENTIFIER: TPDES Permit Number 10619-005, RN101612166; LOCATION: Weslaco, Hidalgo County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10619-005, and the Code, §26.121(a), by failing to comply with the permitted limits for ammonia nitrogen; PENALTY: $1,780; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239-6673; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(35) COMPANY: West Telemarketing Corporation; DOCKET NUMBER: 2004-0401-PST-E; IDENTIFIER: PST Facility Identification Number 73919; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: telecommunication company; RULE VIOLATED: 30 TAC §334.8(c)(4)(B) and (5)(A)(i) and the Code, §26.346(a), by failing to ensure that the UST registration and self-certification forms are accurately completed and submitted and by failing to make available a valid, current delivery certificate; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Mauricio Olaya, (915) 834-4949; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(36) COMPANY: West Texas Superquick, Inc.; DOCKET NUMBER: 2004-0762-PST-E; IDENTIFIER: PST Facility Identification Numbers 40782, 54007, and 23981, RN 101447639, 102264884, and 101431633; LOCATION: Stamford, Haskell County, Texas; TYPE OF FACILITY: convenience stores with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(B) and the Code, §26.346(a), by failing to ensure that the UST registration and self-certification forms were fully and accurately completed; and 30 TAC §334.50(b)(1)(A) and (2)(A)(i)(III) and (ii)(III), (d)(1)(B)(ii) and (iii)(I), and the Code, §26.3475(a) and (c)(1), by failing to monitor the UST system for releases, by failing to perform an annual tightness test on the pressurized piping, by failing to reconcile inventory control records, and by failing to conduct inventory volume measurements; PENALTY: $8,728; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(37) COMPANY: Whitestone Retail, Ltd. Dba Shops at Whitestone; DOCKET NUMBER: 2004-0562-EAQ-E; IDENTIFIER: Edwards Aquifer Protection Plan Number 11-03102301, RN104102892; LOCATION: Cedar Park, Williamson County, Texas; TYPE OF FACILITY: commercial property; RULE VIOLATED: 30 TAC §213.23(a)(1)(B), by failing to receive approval of an Edwards Aquifer contributing zone plan; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Cari Bing, (512) 239-1445; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(38) COMPANY: City of Willis; DOCKET NUMBER: 2004-0686-MWD-E; IDENTIFIER: TPDES Permit Number 0010315-001; LOCATION: Willis, Montgomery County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 0010315-001, and the Code, §26.121, by failing to comply with permitted effluent limits for ammonia nitrogen and flow; PENALTY: $3,280; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023- 1486, (713) 767-3500.

(39) COMPANY: Zali, Inc. dba Kwality Food Mart; DOCKET NUMBER: 2004-0432-PST-E; IDENTIFIER: PST Facility Identification Number 13710, RN101563476; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(1) - (4) and THSC, §382.085(b), by failing to maintain a copy of the facility's California Air Resource Board Order, Stage II employee training records, and Stage II facility maintenance records; PENALTY: $1,150; ENFORCEMENT COORDINATOR: Chris Friesenhahn, (210) 490-3096; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118- 6951, (817) 588-5800.

TRD-200405509
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 31, 2004

♦ ♦ ♦

## Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in

reference to the listed filing deadline. If you have any questions, you may contact Robbie Miller at (512) 463-5780 or (800) 325-8506.

**Deadline: Lobby Activities Report due January 12, 2004**

Dianne Hardy Garcia, 1517 1/2 N. Hayworth Ave, Los Angeles, CA 90046-3301

**Deadline: Lobby Activities Report due April 12, 2004**

Michael J. Warner, P.O. Box 92167, Austin, Texas 78709-2167

Caroline Coleman, 720 Brazos St., Ste. 1004, Austin, Texas 78701

Leah Rummel, 720 Brazos St., Ste. 1004, Austin, Texas 78701

**Deadline: Lobby Activities Report due June 10, 2004**

Michael J. Warner, P.O. Box 92167, Austin, Texas 78709-2167

Pamela Parker, P.O. Box 270121, Austin, Texas 78727

**Deadline: Lobby Activities Report due July 12, 2004**

Michael J. Warner, P.O. Box 92167, Austin, Texas 78709-2167

Barbara Maxwell, 720 Brazos St. #1004, Austin, Texas 78701

**Deadline: Personal Financial Statement due April 30, 2004**

William P. Mahomes, Jr., Simmons & Mahomes, Attorneys at Law 900 Jackson St., Ste. 540, Dallas, Texas 75202

Robert E. Parrish, 1315 Red Maple Dr., Carrollton, Texas 75007-1031

Willard L. Jackson, Jr., Metroplex-Core, Inc. 14425 Cornerstone Village Dr., Houston, Texas 77014-1206

Tony G. Hedges, D.O., 104 East 21st Street, Littlefield, Texas 79339

Jacqueline G. Humphrey, Hudgins/Humphrey, 1800 S. Washington St., #315, Amarillo, Texas 79102

Francisco R. Torres, 1876 S. 7th St., Raymondville, Texas 78580

Jim G. Bray, Jr., 625 18th St., Plano, Texas 75074

Benna Timperlake, 2001 Ocean Dr., Corpus Christi, Texas 78404-1868

John T. Wooldridge, 3323 Richmond Ave. #C, Houston, Texas 77098

Pamela M. Hodges, 414 Mountain Spring Dr., Boerne, Texas 78006

John Q. King, 2400 Givens Ave., Austin, Texas 78722-2105

Morris E. Sandefer, Jr., 230 Pinata, Lumberton, Texas 77657

Cynthia L. Muniz, 694 North Monroe, Eagle Pass, Texas 78852

Byron E. Miller, 7402 John Miller Court, San Antonio, Texas 78244

Susan C. Mengden-Ellis, 431 Northridge, San Antonio, Texas 78209

Robert K. Peters, 3813 Brookwood Dr., Tyler, Texas 75701

G. Al Bendeck, PA-C, 4424 88th St., Lubbock, Texas 79424

Terdema L. Ussery II, 5100 Pinehurst, Frisco, Texas 75034

Linda M. Siy, JPS Health Center Northeast, 837 Brown Trail, Bedford, Texas 76022

Richard Ramirez, 3315 Riviera Dr., Sugar Land, Texas 77479

David Gutierrez, 4022 88th St., Lubbock, Texas 79423

Patrick L. Brockett, CBA 5.202, UT Austin, 1 University Sta., Stop B6500, Austin, Texas 78712-0212

John C. Morris, 12807 Widge, Austin, Texas 78727

Kenneth A. James, 1914 Riverglen Forest, Kingwood, Texas 77345

Linda Diane Steinbrueck, 1401 Darden Hill Rd., Driftwood, Texas 78619

Dori Contreras Garza, 13320 Borolo Drive, Edinburg, Texas 78539

James K. Burnett, 2611 Sir Percival Lane, Lewisville, Texas 75056-5710

Janice B. Howard, 8542 Hidden Hollow Ct., Sienna Plantation, Texas 77459

Bryan K. Brown, 2911 Lacewood Ct., Pearland, Texas 77584

Victor E. Leal, 301 Lake Ridge Rd., Canyon, Texas 79015-6900

Severita Sanchez, 4823 Patio Lane, Laredo, Texas 78041

Timothy N. Taylor, 3531 W. Meadow St., Nacogdoches, Texas 75965-2424

Cliff Mountain, 2909 Meandering River Ct., Austin, Texas 78746

Mi Yun "Maryann" Choi, 121 Logan Ranch Rd., Georgetown, Texas 78628

Stephen T. Rosales, 6910 Jester Blvd., Austin, Texas 78750

Tina Alexander Sellers, 211 Lost Pines Circle, Lufkin, Texas 75901

Brenda Gail Saxon, 2301 Lawnmont Ave #4, Austin, Texas 78756-1938

Melinda Sue Fredricks, 822 Stone Mountain Dr., Conroe, Texas 77302

Ruby Sciore, 2102 Patsy Parkway, Austin, Texas 78744

Ronald P. Williams, 327 Pagoda Oak, San Antonio, Texas 78230

**Deadline: Personal Financial Statement due June 29, 2004**

E. Jeffrey Wentworth, 160 Country Lane, San Antonio, Texas 78209-2228

Jose E. de Santiago Sr., 15927 Jove St., Houston, Texas 77060

Dorothy N. Stewart-Bridges, 17934 Island Spring Lane, Tomball, Texas 77375

Susan Lee Hargrave, P.O. Box 2496, Cedar Hill, Texas 75106

Rogelio Martinez, 5714 N. Broadway, McAllen, Texas 78504

Gerry E. Pate, 13333 Northwest Frwy., Ste. 300, Houston, Texas 77040

TRD-200405518
Sarah Woelk
Executive Director
Texas Ethics Commission
Filed: September 1, 2004

♦ ♦ ♦

## Texas Department of Health

### Correction of Error

In the July 30, 2004, issue of the *Texas Register* (29 TexReg 7427), the Texas Department of Health adopted new 25 TAC §289.301. Due to an error in the agency's submission, the rule text that appears in §289.301(j)(1)(C) and (D) is incorrect. On page 7436, column 2, subparagraph (C) should read "laser safety officer (LSO)." and subparagraph (D) should be omitted.

The text of the rule should read as follows:

"(C) laser safety officer (LSO).

"(2) No person shall make, sell, lease, transfer, . . ."

TRD-200405499

♦ ♦ ♦

## Correction of Error

In the July 30, 2004, issue of the *Texas Register* (29 TexReg 7369), the Texas Department of Health adopted new 25 TAC §289.233. Due to an error in the agency's submission, a reference that appears in column 2 on page 7377 is wrong. In the fourth sentence of §289.233(g)(1)(B), the reference "§289.204(h) of this title..." should be "§289.204(j) of this title..."

The sentence should read:

"In the case of a single certificate of registration that authorizes more than one category of use, the category listed in §289.204(j) of this title...."

TRD-200405500

♦ ♦ ♦

## Notice of Agreed Order with Healthsouth Diagnostic Centers of Texas, LP, dba Healthsouth Diagnostic Center of Hurst

On August 20, 2004, the director of the Bureau of Radiation Control (bureau), Texas Department of Health, approved the settlement agreement between the bureau and Healthsouth Diagnostic Centers of Texas, LP, doing business as Healthsouth Diagnostic Center of Hurst (registrant-M00643) of Hurst. A total administrative penalty in the amount of $8,000 was assessed the registrant for violations of 25 Texas Administrative Code, Chapter 289. Of the total administrative penalty, $4,000 will be forgiven if the registrant complies with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays). Contact Chrissie Toungate, Custodian of Records, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, by calling (512) 834-6688, or by visiting the Exchange Building, 8407 Wall Street, Austin, Texas.

TRD-200405494
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: August 30, 2004

♦ ♦ ♦

## Notice of Agreed Order with Professional Services Industries, Inc.

On August 19, 2004, the director of the Bureau of Radiation Control (bureau), Texas Department of Health, approved the settlement agreement between the bureau and Professional Service Industries, Inc. (licensee-L04946) of San Antonio. A total administrative penalty in the amount of $5,000 was assessed the licensee for violations of 25 Texas Administrative Code, Chapter 289. Of the total administrative penalty, $3,000 will be probated for a period of one year, and will be forgiven if the licensee complies with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays). Contact Chrissie Toungate, Custodian of Records, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, by calling (512) 834-6688, or by visiting the Exchange Building, 8407 Wall Street, Austin, Texas.

TRD-200405495
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: August 30, 2004

♦ ♦ ♦

## Notice of Amendment Number 28 to the Radioactive Material License of Waste Control Specialists, LLC

Notice is hereby given by the Texas Department of Health (department), Bureau of Radiation Control that it has amended Radioactive Material License Number L04971 issued to Waste Control Specialists, LLC (WCS) located in Andrews County, Texas, one mile North of State Highway 176; 250 feet East of the Texas/New Mexico State Line; 30 miles West of Andrews, Texas.

Amendment number 28 allows for the licensee to utilize a waste exemption authorized in rule for short-lived, less than 300 day half-life, radionuclides within established limits, to be buried without regard to its radioactivity in a Texas Commission on Environmental Quality (TCEQ) permitted Type I municipal solid waste facility, or certain waste to a hazardous waste site.

The department has determined that the amendment of the license and the documentation submitted by the licensee provide reasonable assurance that the licensee's radioactive waste facility is operated in accordance with the requirements of 25 Texas Administrative Code (TAC), Chapter 289; the amendment of the license will not be inimical to the health and safety of the public or the environment; and the activity represented by the amendment of the license will not have a significant effect on the human environment.

This notice affords the opportunity for a public hearing upon written request within 30 days of the date of publication of this notice by a person affected as required by Texas Health and Safety Code, §401.116 and as set out in 25 TAC, §289.205(f). A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to a county, in which the radioactive material is or will be located; or (b) doing business or has a legal interest in land in the county or adjacent county.

A person affected may request a hearing by writing Mr. Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, 1100 West 49th Street, Austin, Texas, 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by this action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the agency action will be final.

A public hearing, if requested, shall be conducted in accordance with the provisions of Texas Health and Safety Code, Chapter 401, the Administrative Procedure Act (Chapter 2001, Texas Government Code), the formal hearing procedures of the department (25 TAC, §§1.21 et seq.) and the procedures of the State Office of Administrative Hearings (1 TAC, Chapter 155).

A copy of the license amendment and supporting materials are available, by appointment, for public inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays). Information relative to inspection and copying the documents may be

obtained by contacting Chrissie Toungate, Custodian of Records, Bureau of Radiation Control.

TRD-200405496
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: August 30, 2004

♦ ♦ ♦

## Department of State Health Services

Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

AMENDMENTS TO EXISTING LICENSES ISSUED:

| Location | Name | License # | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Alice | Christus Spohn Health System Corporation DBA Christus Spóhn Hospital Alice | L02390 | Alice | 35 | 08/26/04 |
| Amarillo | Northwest Texas Healthcare System Inc DBA Northwest Texas Hospital | L02054 | Amarillo | 72 | 08/17/04 |
| Andrews | Waste Control Specialists LLC | L04971 | Andrews | 28 | 08/18/04 |
| Angleton | Angleton Danbury General Hospital | L02544 | Angleton | 28 | 08/25/04 |
| Arlington | The University of Texas at Arlington | L00248 | Arlington | 41 | 08/25/04 |
| Athens | East Texas Medical Center | L02470 | Athens | 35 | 08/23/04 |
| Austin | Austin Radiological Association | L00545 | Austin | 102 | 08/19/04 |
| Austin | Freescale Semiconductor Inc. | L05347 | Austin | 06 | 08/25/04 |
| Conroe | Montgomery County Cardiovascular Assoc. | L05151 | Conroe | 10 | 08/26/04 |
| Dallas | Medical City Dallas Hospital DBA Medical City | L01976 | Dallas | 150 | 08/18/04 |
| Dallas | Cardinal Health | L02048 | Dallas | 113 | 08/23/04 |
| Dallas | Doctors Hospital | L01366 | Dallas | 44 | 08/24/04 |
| El Paso | Providence Memorial Hospital | L02353 | El Paso | 81 | 08/24/04 |
| El Paso | Tenet Hospitals Limited DBA Sierra Medical Center | L02365 | El Paso | 53 | 08/23/04 |
| Ferris | Fred Maese Heart Center DBA Ferris Heart Center | L05409 | Ferris | 03 | 08/20/04 |
| Fort Worth | Fort Worth Surgicare Partners LTD DBA Medical Centre Surgicare | L05668 | Fort Worth | 03 | 08/18/04 |
| Fort Worth | Fort Worth Medical Plaza Inc DBA Columbia Plaza Med. Ctr of Ft. Worth | L02171 | Fort Worth | 45 | 08/23/04 |
| Hillsboro | Hill Regional Hospital | L01949 | Hillsboro | 30 | 08/26/04 |
| Houston | River Oaks Imaging and Diagnostic LP DBA River Oaks Imaging and Diagnostic | L05455 | Houston | 09 | 08/12/04 |
| Houston | River Oaks Medical Center LP DBA Twelve Oaks Medical Center | L02432 | Houston | 41 | 08/17/04 |
| Houston | Memorial Hermann Hospital System DBA Memorial Hospital Memorial City | L01168 | Houston | 77 | 08/20/04 |
| Houston | Memorial Hermann Hospital System DBA Memorial Hospital Memorial City | L01168 | Houston | 78 | 08/24/04 |
| Houston | Memorial Hermann Hospital System DBA Memorial Hospital Southwest | L00439 | Houston | 95 | 08/24/04 |
| Houston | Sisters of Charity of the Incarnate Word DBA St. Joseph Hospital | L02279 | Houston | 54 | 08/25/04 |
| Houston | Exxon Mobil Corporation C/O Exxon Mobil Refining and Supply | L01431 | Houston | 11 | 08/19/04 |
| Houston | Kellogg Brown & Root Inc | L03660 | Houston | 14 | 08/25/04 |
| Houston | Washington Group International Inc. | L02662 | Houston | 94 | 08/25/04 |
| Irving | Las Colinas PET Imaging LLP | L05724 | Irving | 01 | 08/24/04 |
| Linden | Linden Municipal Hospital | L02721 | Linden | 16 | 08/20/04 |

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

| Location | Name | License # | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Longview | Longview Cancer Center | L05017 | Longview | 05 | 08/26/04 |
| Lubbock | Covenant Medical Center | L00483 | Lubbock | 125 | 08/13/04 |
| Lubbock | Highland Medical Center LP<br>DBA Highland Medical Center | L02467 | Lubbock | 25 | 08/20/04 |
| Lubbock | Texas Tech University<br>Environmental Health and Safety | L01536 | Lubbock | 75 | 08/25/04 |
| Lufkin | Piney Woods Healthcare System<br>DBA Woodland Heights Medical Center | L01842 | Lufkin | 48 | 08/17/04 |
| McKinney | Cardiac Center of Texas PA | L05744 | McKinney | 01 | 08/23/04 |
| Mesquite | HMA Mesquite Hospitals Inc<br>DBA Medical Center of Mesquite | L02428 | Mesquite | 39 | 08/20/04 |
| Mesquite | Saleem Mallick M.D. PA | L05132 | Mesquite | 09 | 08/24/04 |
| Pasadena | Chevron Phillips Chemical Company LP | L00230 | Pasadena | 71 | 08/16/04 |
| Pasadena | Premier Heart Specialists PA | L05750 | Pasadena | 01 | 08/23/04 |
| Pasadena | Mohamed O Jeroudi M.D. PA | L05753 | Pasadena | 04 | 08/24/04 |
| Pasadena | BASF Corporation | L05782 | Pasadena | 01 | 08/25/04 |
| Point Comfort | Formosa Plastics Corporation - Texas | L03893 | Point Comfort | 27 | 08/18/04 |
| Port Arthur | S K Rao M.D. PA | L05415 | Port Arthur | 06 | 08/18/04 |
| Richardson | Metroscan of Richardson LLC | L05688 | Richardson | 02 | 08/13/04 |
| San Antonio | Methodist Healthcare System of San Antonio<br>DBA Methodist Hospital | L00594 | San Antonio | 190 | 08/19/04 |
| San Antonio | Baptist Imaging Center | L04506 | San Antonio | 45 | 08/20/04 |
| San Marcos | Central Texas Medical Center | L03133 | San Marcos | 19 | 08/25/04 |
| Seguin | Guadalupe Valley Hospital | L02292 | Seguin | 24 | 08/18/04 |
| Throughout TX | SGS North America Inc. | L05796 | Deer Park | 02 | 08/30/04 |
| Throughout TX | Gilbert Texas Construction Corp | L04569 | Fort Worth | 16 | 08/25/04 |
| Throughout TX | Peachtree Construction Co. | L05401 | Fort Worth | 05 | 08/25/04 |
| Throughout TX | Mandes Inspection & Testing Services Inc. | L05220 | Houston | 46 | 08/23/04 |
| Throughout TX | Austin Reed Engineers LLC | L05578 | Houston | 02 | 08/23/04 |
| Throughout TX | Longview Inspection Inc. | L01774 | La Porte | 206 | 08/18/04 |
| Throughout TX | Eagle X-Ray | L03246 | Mont Belvieu | 81 | 08/20/04 |
| Throughout TX | Sonic Surveys Inc. | L02622 | Mont Belvieu | 18 | 08/23/04 |
| Throughout TX | Big State X-Ray | L02693 | Odessa | 38 | 08/18/04 |
| Throughout TX | Fugro South Inc. | L04322 | Pasadena | 72 | 08/23/04 |
| Throughout TX | All American Inspection Inc. | L01336 | San Antonio | 50 | 08/25/04 |
| Throughout TX | Raba-Kistner Consultants Inc.<br>ADBA Raba-Kistner-Brytest Consultants Inc. | L01571 | San Antonio | 54 | 08/25/04 |
| Throughout TX | CB&I Constructors Inc. | L01902 | The Woodlands | 62 | 08/18/04 |
| Trinity | East Texas Medical Center Trinity | L05392 | Trinity | 05 | 08/23/04 |
| Tyler | East Texas Medical Center | L00977 | Tyler | 111 | 08/19/04 |
| Waco | Waco Cardiology Associates | L05158 | Waco | 08 | 08/24/04 |
| Wichita Falls | United Regional Health Care System Inc. | L00350 | Wichita Falls | 94 | 08/24/04 |

RENEWAL OF LICENSES ISSUED:

| Location | Name | License # | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Galveston | The University of Texas Medical Branch Office of Environmental Health and Safety | L01299 | Galveston | 63 | 08/16/04 |
| New Braunfels | McKenna Memorial Hospital | L02429 | New Braunfels | 39 | 08/26/04 |
| Odessa | Suresh N Gadasalli M.D. PA | L05156 | Odessa | 10 | 08/23/04 |
| Throughout TX | Janik Enterprises Inc DBA Medical Physics Consultants | L03319 | Arlington | 07 | 08/13/04 |
| Throughout TX | Geotest Engineering Inc. | L02735 | Houston | 43 | 08/25/04 |
| Throughout TX | L J Wireline Service | L05085 | Midland | 02 | 08/25/04 |

TERMINATIONS OF LICENSES ISSUED:

| Location | Name | License # | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Throughout TX | Kellogg Brown & Root Inc Corporate Licensing Department | L03391 | Houston | 30 | 08/18/04 |
| Throughout TX | Superior Testing Services | L05145 | Pasadena | 21 | 08/19/04 |

LICENSE EXEMPTION ISSUED:

| Location | Name | License # | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Austin | Columbia/St. David's Healthcare System LP DBA St. David's Medical Center | L00740 | Austin | | 08/25/04 |
| Houston | Valentina Ugolini M.D. DBA Cy-Fair Cardiology Consultants | L05093 | Houston | | 08/26/04 |
| San Antonio | Endocrinology Nuclear Medicine Associates PA | L03343 | San Antonio | | 08/19/04 |
| Tyler | Physician Reliance Network Inc. DBA Tyler Cancer Center | L04788 | Tyler | | 08/26/04 |

In issuing new licenses, amending and renewing existing licenses, or approving exemptions to Title 25 Texas Administrative Code (TAC), Chapter 289, the Texas Department of Health (department), Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with 25 TAC, Chapter 289 in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the new, amended, or renewed license(s) or the issuance of the exemption(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable requirements of 25 TAC, Chapter 289. In granting termination of licenses, the department has determined that the licensee has properly decommissioned its facilities according to the applicable requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, P.E., Director, Radiation Control Program, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200405534

Cathy Campbell
Director, Office of General Counsel
Department of State Health Services
Filed: September 1, 2004

♦ ♦ ♦

## Notice of Agreed Order with Bobby Gene Matthews

On August 25, 2004, the director of the Bureau of Radiation Control (bureau), Texas Department of Health, approved the settlement agreement between the bureau and Bobby Gene Matthews (Texas Industrial Radiographer Number 002037) of Huffman. In lieu of the assessment of administrative penalties, the radiographer is prohibited for five years from functioning as an industrial radiographer in Texas, obtaining an industrial radiographer certification identification card in Texas, or obtaining a radioactive materials license in Texas.

A copy of all relevant material is available, by appointment, for public inspection Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays). Contact Chrissie Toungate, Custodian of Records, Bureau of Radiation Control, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189, by calling (512) 834-6688, or by visiting the Exchange Building, 8407 Wall Street, Austin, Texas.

TRD-200405532
Cathy Campbell
Director, Office of General Counsel
Department of State Health Services
Filed: September 1, 2004

♦ ♦ ♦

## Notice of Agreed Order with East Texas Medical Center - Pittsburg

On August 20, 2004, the director of the Bureau of Radiation Control (bureau), Texas Department of Health, approved the settlement agreement between the bureau and East Texas Medical Center - Pittsburg (registrant-M00171) of Pittsburg. A total administrative penalty in the amount of $6,000 is assessed the registrant for violations of 25 Texas Administrative Code, Chapter 289. Of the total administrative penalty, $3,000 is probated for a period of one year, and will be forgiven if the registrant complies with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays). Contact Chrissie Toungate, Custodian of Records, Bureau of Radiation Control, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189, by calling (512) 834-6688, or by visiting the Exchange Building, 8407 Wall Street, Austin, Texas.

TRD-200405531
Cathy Campbell
Director, Office of General Counsel
Department of State Health Services
Filed: September 1, 2004

♦ ♦ ♦

## Notice of Agreed Order with Raven Inspection and Testing, Inc.

On August 25, 2004, the director of the Bureau of Radiation Control (bureau), Texas Department of Health, approved the settlement agreement between the bureau and Raven Inspection and Testing, Inc. (licensee-L05219) of Huffman. In lieu of the assessment of administrative penalties, the licensee, its officers, employees and agents are prohibited from possessing or using radioactive material in Texas without a license issued by the bureau, and is prohibited from obtaining a radioactive material license in Texas for a period of five years from the date of the Order.

A copy of all relevant material is available, by appointment, for public inspection Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays). Contact Chrissie Toungate, Custodian of Records, Bureau of Radiation Control, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189, by calling (512) 834-6688, or by visiting the Exchange Building, 8407 Wall Street, Austin, Texas.

TRD-200405533
Cathy Campbell
Director, Office of General Counsel
Department of State Health Services
Filed: September 1, 2004

♦ ♦ ♦

## Notice of Maximum Fees Allowed for Providing Health Care Information Effective September 6, 2004

The Department of State Health Services licenses general and special hospitals in accordance with the Health and Safety Code, Chapter 241. In 1995, the Texas Legislature amended the law to address the release and confidentiality of health care information. In accordance with Health and Safety Code, §241.154(e), the fee for providing a patient's health care information has been adjusted 3.0% to reflect the most recent changes to the consumer price index as published by the Bureau of Labor Statistics (BLS) of the United States Department of Labor. The BLS measures the average changes in prices of goods and services purchased by urban wage earners and clerical workers. Health and Safety Code, §241.154

(b) Except as provided by subsection (d), the hospital or its agent may charge a reasonable fee for providing the health care information and is not required to permit the examination, copying, or release of the information requested until the fee is paid unless there is a medical emergency. The fee may not exceed the sum of:

(1) a basic retrieval or processing fee, which must include the fee for providing the first 10 pages of copies and which may not exceed $37.09; and

(A) a charge for each page of:

(i) $1.24 for the 11th through the 60th page of provided copies;

(ii) $.62 for the 61st through the 400th page of provided copies;

(iii) $.32 for any remaining pages of the provided copies; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies; or

(2) if the requested records are stored on any microform or other electronic medium, a retrieval or processing fee, which must include the fee for providing the first 10 pages of the copies and which may not exceed $55.64; and

(A) $1.24 per page thereafter; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies.

(c) In addition, the hospital or its agent may charge a reasonable fee for:

(1) execution of an affidavit or certification of a document, not to exceed the charge authorized by, Civil Practice and Remedies Code, §22.004; and

(2) written responses to a written set of questions, not to exceed $12.36 for a set.

(d) A hospital may not charge a fee for:

(1) providing health care information under Subsection (b) to the extent the fee is prohibited under Subchapter M, Chapter 161;

(2) a patient to examine the patient's own health care information;

(3) providing an itemized statement of billed services to a patient or third-party payer, except as provided under §311.002(f); or

(4) health care information relating to treatment or hospitalization for which workers' compensation benefits are being sought, except to the extent permitted under Labor Code, Chapter 408.

This is published only as a courtesy to licensed hospitals. Hospitals are responsible for verifying that any fees charged for health care information are in accordance with the Health and Safety Code, Chapter 241. If you have any questions, please contact the Department of State Health Services, Facility Licensing Group, telephone 512/834-6648.

TRD-200405530
Cathy Campbell
Director, Office of General Counsel
Department of State Health Services
Filed: September 1, 2004

♦ ♦ ♦

## Texas Health and Human Services Commission

### Notice of Adopted Nursing Facility Payment Rates for State Veterans Homes

Notice of Adopted Nursing Facility Payment Rates for State Veterans Homes

As single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) adopts the following per diem payment rates for the four state-owned veterans nursing facilities for state fiscal year (SFY) 2005 effective September 1, 2004: Big Spring, $126.00; Bonham, $126.00; Floresville, $126.00; and Temple, $126.00.

HHSC conducted a public hearing on July 12, 2004, to receive public comment on proposed payment rates for state-owned veterans nursing facilities operated by the Texas General Land Office and Veterans Land Board. The hearing was held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires public hearings on proposed payment rates. The public hearing was held on July 12, 2004, at 8:30 a.m., in the Lone Star Room of the Braker Center Building, at 11209 Metric Blvd., Austin, Texas, 78758-4021.

Methodology and justification. The adopted rates were determined in accordance with the reimbursement setting methodology at 1 TAC §355.311.

TRD-200405503
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: August 31, 2004

♦ ♦ ♦

### Notice of Intent to Amend Consulting Contract

On October 10, 2003, the Health and Human Services Commission (HHSC) procured the consulting services of MTG Management Consulting, L.L.C. (MTG) to serve as HHSC's project manager for a pilot program that will use biometric identification technology to verify Medicaid recipients' identities. HHSC believes the Front-End Authentication and Fraud Prevention System Pilot (also known as the Medicaid Integrity Pilot) will help prevent fraud, abuse, or waste in health and human services programs, as directed by House Bill 2292, 78th Regular Session, Texas Legislature, 2003.

MTG's primary responsibility under the consulting contract has been to serve as HHSC's project manager and primary contact with contracted pilot vendors during the planning, implementation, operation and turnover of the pilot program. As the project manager, MTG has provided ongoing program oversight, evaluation of the pilot project vendor's performance, and routine reporting on project milestones and deliverables. In addition, MTG has supported consideration of the pilot concept to be combined with other services programs and benefit delivery concepts. As a result of these efforts, HHSC has identified a need to perform a feasibility study to analyze the compatibility of the pilot program's "Smart Card" with other state programs. Specifically, HHSC would like MTG to evaluate whether the technologies used in the Smart Cards could be used to create a universal card for services, and provide electronic Medicaid eligibility verification. This study would build on the work already completed by MTG.

As required by the provisions of Texas Government Code, Chapter 2254, prior to amending its contract with MTG, HHSC extends this invitation to qualified and experienced consultants interested in providing the consulting services described in this notice. Unless a better offer (as determined by HHSC) is received from another vendor in response to this notice, HHSC intends to enter into negotiations with MTG to amend its consulting services contract.

Scope of Work:

The Services and Deliverables will include, at a minimum:

(1) Provide project management support of the universal benefit card (UBC) project and feasibility study, in combination with the related Medicaid Integrity Project (MIP) project.

(2) Support HHSC in the development of a feasibility study report considering the integration of the MIP, Electronic Medicaid Eligibility Verification (EMEV), and Food Stamp EBT on a single card and single platform. Specific tasks will include:

a. initiation and assessment,

b. alternatives development,

c. alternatives analysis,

d. cost-benefit analysis,

e. project recommendations, and

f. updates based on final pilot results.

(3) In providing the Services and Deliverables, the contractor must ensure compliance with state and federal laws, rules and regulations governing the applicable programs.

(4) The selected consultant must provide Services and Deliverables at HHSC's direction to accommodate HHSC's need for preliminary information to prepare for the 79th legislature, Regular Session, 2005 and have final recommendations complete by March 2005. In order to meet this deadline, the selected consultant must provide deliverables as follows:

a. Submit the final version of the feasibility study, incorporating final pilot results and input from HHSC, by March 2, 2005.

b. Submit the first draft of the feasibility study to HHSC by December 22, 2004.

c. Complete the cost-benefit analysis by December 15, 2004.

d. Complete alternatives analysis by December 1, 2004.

e. Complete alternatives development by November 24, 2004.

f. Complete background and needs assessment by October 6, 2004.

g. Complete project initiation by September 30, 2004.

Finding of Fact:

HHSC has submitted a request to the Governor's Office of Budget, Planning, and Policy for a finding of fact that the requested consulting services are necessary. Execution of a contract is contingent upon receipt of such a finding.

Specifications:

Any consultant submitting an offer in response to this notice must provide the following:

(1) Consultant's legal name, including type of entity (individual, partnership, corporation, etc.), and address;

(2) Background information regarding the consultant, including the number of years in business and the number of employees;

(3) Information regarding the qualifications, education, and experience of the team members proposed to conduct the requested services;

(4) The hourly rate to be charged for each team member providing services;

(5) The earliest date by which the consultant could begin providing the services;

(6) A list of five client references, including any State Medicaid Programs for which consultant has provided consulting services;

(7) A statement of consultant's approach to the project (i.e., the services described in the Scope of Work section of this notice), any unique benefits consultant offers HHSC, and any other information consultant desires HHSC to consider in connection with consultant's offer;

(8) Information to assist HHSC in assessing consultant's demonstrated competence and experience providing consulting services similar to the services requested in this notice;

(9) Information to assist HHSC in assessing the consultant's knowledge and/or capabilities of developing independent feasibility and cost-benefit studies, Texas Medicaid programs, smart card and biometric technologies associated with deterring fraud, and specific issues related to the Front-End Authentication and Fraud Prevention System Pilot;

(10) The following required forms, which are located on its website at http://www.hhsc.state.tx.us/about_hhsc/Contracting/rfp_attch/attach.html:

a. Child Support Certification;

b. Debarment, Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts;

c. Federal Lobbying Certification;

d. Nondisclosure Statement;

e. Proposer Information; and

f. HUB Subcontracting Plan Forms (Pre-Award). To search for potential HUB vendors who may perform subcontracting opportunities, respondents may refer to the Texas Building and Procurement

Commission's Centralized Master Bidders List HUB Directory, which is found at http://www.tbpc.state.tx.us/cmbl/cmblhub.html. Class and item codes for potential subcontracting opportunities under this notice, include, but are not limited to: Class 918 - "Consulting Services;" Item 06 - "Administrative Consulting," Items 28-29 - "Computer Hardware and Software Consulting," and Item 58 - "Governmental Consulting."

Failure to submit the required forms will result in HHSC's disqualification of the offer.

(11) Information to assist HHSC in assessing whether the consultant will have any conflicts of interest in performing the requested services.

Criteria for Selection:

HHSC intends to negotiate an amendment to the MTG contract unless it receives a better offer for the desired services. HHSC will make its selection based on demonstrated competence, knowledge and qualifications, considering the reasonableness of the proposed fees for services.

How To Respond; Submittal Deadline:

All offers must contain the information requested in the Specifications section of this notice and be received no later than 5:00 p.m., C.S.T., September 22, 2004. Submissions received after the deadline will not be considered. Offers must be submitted to Ms. Sherry McCulley, Health and Human Services Commission, 4900 North Lamar, Austin, Texas, 78751.

Questions:

Questions concerning this notice and all offers in response to this request should be directed to HHSC's sole point of contact for this notice, Ms. Sherry McCulley, Health and Human Services Commission, 4900 North Lamar, Austin, Texas, 78751.

TRD-200405504
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: August 31, 2004

♦ ♦ ♦

## Notice of Intent to Amend Consulting Contract

On November 3, 2003, the Health and Human Services Commission (HHSC) hired Bailit Health Purchasing, L.L.C. (Bailit) to assist with the planning and development of a value-based procurement for the Medicaid and Children's Health Insurance Program (CHIP) managed care programs. HHSC believes the value-based purchasing model will help HHSC deliver managed care services in a more cost-effective manner, as directed by House Bill 2292, 78th Regular Session, Texas Legislature, 2003.

Bailit's primary responsibility under the consulting contract has been to help HHSC develop the procurement instrument, evaluation materials, a consolidated managed care contract, and contract management tools. As a result of these efforts, HHSC has identified a need for significant revisions to the Texas Medicaid managed care waivers (see §§1915(b) & (c) of the Social Security Act). The revisions will reflect HHSC's new approach to purchasing Medicaid managed care services through the value-based purchasing model. HHSC has also identified the need to develop a detailed desk manual on how to monitor value-based managed care contracts.

As required by the provisions of Texas Government Code, Chapter 2254, prior to amending its contract with Bailit, HHSC extends this invitation to qualified and experienced consultants interested in providing the consulting services described in this notice. Unless a better offer (as determined by HHSC) is received from another vendor in response to this notice, HHSC intends to enter into negotiations with Bailit to amend its consulting services contract.

Scope of Work:

The Services and Deliverables will include, at a minimum:

(1) Assist with the development of a 1915(b) managed care waiver for Texas that combines HMO STAR and STAR+PLUS across all areas of the state into a consolidated document;

(2) Assist with the development of a 1915(c) managed care waiver for Texas for the long-term care components of STAR+PLUS across all areas of the state into a consolidated document;

(3) Incorporate value-based purchasing and other new managed care strategies resulting from the STAR and STAR+PLUS HMO procurement into the managed care waivers;

(4) Provide guidance and technical assistance to HHSC staff on waiver development activities;

(5) Assist HHSC in coordinating with the Centers for Medicare and Medicaid Services (CMS) on activities involved in the approval process, including responding to questions and preparing additional requested information;

(6) Meet with or be available to HHSC staff for telephone conference calls at HHSC's request;

(7) Develop a desk manual with detailed policies and procedures on how to operate a comprehensive managed care contract monitoring function for Medicaid and CHIP, incorporating requirements from the HMO procurement and using the contract management tools developed for the procurement; and

(8) Provide technical assistance and training to HHSC staff and contractors on the desk manual.

In providing the Services and Deliverables, the contractor must ensure compliance with state and federal laws, rules and regulations governing the Medicaid and CHIP programs.

The selected consultant must provide Services and Deliverables at HHSC's direction to accommodate HHSC's implementation of the procurement and re-procurement of managed care services beginning in July 2005. In order to meet this deadline, the selected consultant must provide deliverables as follows:

(1) Submit the first draft of each waiver to HHSC by November 15, 2004;

(2) Submit the final version of each waiver, incorporating input from HHSC, by December 15, 2004;

(3) Respond to questions and make revisions based on CMS' comments as needed throughout the CMS approval process;

(4) Submit outline of draft desk manual by November 15, 2004;

(5) Submit first draft of desk manual by January 15, 2004;

(6) Submit final version of desk manual to HHSC by February 15, 2004; and

(7) Provide training and follow up assistance as requested by HHSC on implementing the desk manual.

Finding of Fact:

HHSC has submitted a request to the Governor's Office of Budget, Planning, and Policy for a finding of fact that the requested consulting services are necessary. Execution of a contract is contingent upon receipt of such a finding.

Specifications:

Any consultant submitting an offer in response to this Invitation must provide the following:

(1) Consultant's legal name, including type of entity (individual, partnership, corporation, etc.), and address;

(2) Background information regarding the consultant, including the number of years in business and the number of employees;

(3) Information regarding the qualifications, education, and experience of the team members proposed to conduct the requested services;

(4) The hourly rate to be charged for each team member providing services;

(5) The earliest date by which the consultant could begin providing the services;

(6) A list of five client references, including any state Medicaid or CHIP programs for which consultant has provided consulting services;

(7) A statement of consultant's approach to the project (i.e., the services described in the Scope of Work section of this notice), any unique benefits consultant offers HHSC, and any other information consultant desires HHSC to consider in connection with consultant's offer;

(8) Information to assist HHSC in assessing consultant's demonstrated competence and experience providing consulting services similar to the services requested in this notice;

(9) Information to assist HHSC in assessing the consultant's knowledge of development of federal Medicaid 1915(b) and 1915(c) waivers, the Texas Medicaid managed care programs, value-based purchasing, and development of managed care contract monitoring policies and procedures;

(10) The following required forms, which are located on its website at http://www.hhsc.state.tx.us/about_hhsc/Contracting/rfp_attch/attach.html:

(a) Child Support Certification;

(b) Debarment, Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts;

(c) Federal Lobbying Certification;

(d) Nondisclosure Statement;

(e) Proposer Information; and

(f) HUB Subcontracting Plan Forms (Pre-Award). To search for potential HUB vendors who may perform subcontracting opportunities, respondents may refer to the Texas Building and Procurement Commission's Centralized Master Bidders List HUB Directory, which is found at http://www.tbpc.state.tx.us/cmbl/cmblhub.html. Class and item codes for potential subcontracting opportunities under this notice, include, but are not limited to: Class 918 - "Consulting Services;" Item 06 - "Administrative Consulting," Item 58 - "Governmental Consulting," and Item 78 "Medical Consulting."

Failure to submit the required forms will result in HHSC's disqualification of the offer.

(11) Information to assist HHSC in assessing whether the consultant will have any conflicts of interest in performing the requested services.

Criteria for Selection:

HHSC intends to negotiate an amendment to the Bailit contract unless it receives a better offer for the desired services. HHSC will make its selection based on demonstrated competence, knowledge and qualifications, considering the reasonableness of the proposed fees for services.

How To Respond; Submittal Deadline:

All offers must contain the information requested in the Specifications section of this notice and be received no later than 5:00 p.m., C.S.T., on Thursday, September 30, 2004.. Submissions received after the

deadline will not be considered. Offers must be submitted to Ms. Jill Melton, Health and Human Services Commission, 11209 Metric Blvd., Building H, Austin, Texas, 78758.

Questions:

Questions concerning this invitation and all offers in response to this notice should be directed to HHSC's sole point of contact regarding this notice, Ms. Jill Melton, Health and Human Services Commission, 11209 Metric Blvd., Building H, Austin, Texas, 78758, 512/491-1300.

TRD-200405505
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: August 31, 2004

♦ ♦ ♦

## Texas Department of Housing and Community Affairs

### Notice of Public Hearings--Community Services Block Grant and Community Food and Nutrition Program

As part of the public information consultation and public hearings requirements for the Community Services Block Grant, a federal block grant, the Texas Department of Housing and Community Affairs (TDHCA) is conducting four public hearings. The Department recently issued a public notice describing the purpose of the CSBG Public Hearings. The Department is expanding the purpose of the hearings to include the solicitation of comments on the proposed use and distribution of federal fiscal year (FFY) 2006-2007 funds provided under the Community Services Block Grant (CSBG) and the Community Food and Nutrition Program (CFNP). At the hearings, the Department will discuss CSBG formula changes, the proposed use and distribution of federal fiscal year (FFY) 2005-2007 CSBG funds, the intended use of CFNP funds for 2005-2007, the implementation of CSBG National Performance Indicators in 2005, and the requirement in 2006 for CSBG contractors to begin reporting performance data utilizing the CSBG National Performance Indicators. The CSBG National Performance Indicators, set forth by the U.S. Department of Health and Human Services, are a set of performance indicators of 12 broad outcome measures that will capture the most universal accomplishments of CSBG agencies. The CSBG fund distribution formula change, effective January 1, 2005, will incorporate 2000 U.S. Census population figures at 125% of poverty, a $50,000 base, a $150,000 floor, a 98% weight to the poverty population factor, and a 2% weight to the population density factor.

The schedule for the four public hearings is as follows:

Monday, September 27, 2004

6:00 p.m.

City of El Paso

City Council Chambers

2 Civic Center Plaza, 2nd floor

El Paso, TX 79901

Tuesday, September 28, 2004

3:00 p.m.

Dallas Public Library

West Room

1515 Young Street

Dallas, TX 75201

Wednesday, September 29, 2004

10:30 a.m.

San Antonio City Council Chambers

114 W. Commerce

San Antonio, TX 78205

Thursday, September 30, 2004

5:00 p.m.

Tyler Public Library

201 South College Avenue

Tyler, TX 75702

Individuals who require auxiliary aids or services should contact Gina Esteves, ADA Responsible Employee, at least two days before the scheduled hearing at (512) 475-3943 or Relay Texas at 1-800-735-2989 so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Delores Groneck, (512) 475-3934 at least three days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres dias antes de la junta para hacer los preparativos apropriados.

A representative from TDHCA will be present to explain the planning process and receive comments from interested citizens and affected groups regarding the proposed plans. Intended Use Reports may be obtained on or about September 20, 2004 by contacting the Texas Department of Housing and Community Affairs, Community Affairs Division, P. O. Box 13941, Austin, Texas 78711-3941. For questions, contact the Community Services Section at (512) 475-3905. Comments on the intended use of funds may be in the form of written comments or oral testimony at the hearings. Written comments may be submitted to TDHCA at the time of the hearings or by mail no later than October 1, 2004.

TRD-200405522
Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 1, 2004

♦ ♦ ♦

## Texas Department of Insurance

### Company Licensing

Application for admission to the State of Texas by NORTH POINTE INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Southfield, Michigan.

Application for incorporation to the State of Texas by MOLINA HEALTHCARE OF TEXAS, INC., a domestic Health Maintenance Organization (HMO). The home office is in Fort Worth, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas, 78701, within 20 days after this notice is published in the *Texas Register*.

TRD-200405519

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 1, 2004

♦ ♦ ♦

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of PRIME THERAPEUTICS, LLC., a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Any objections must be filed within 20 days after this notice is published in the Texas Register, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200405520
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 1, 2004

♦ ♦ ♦

## Texas Judicial Council

Request for Applications - FY05 Grants for Indigent Defense

FY05 Formula and Discretionary Grant Program Task Force on Indigent Defense. Visit website at www.courts.state.tx.us/tfid for more information. Contact: Bryan Wilson, Grants Administrator Phone: (512) 936-6994

TRD-200405421
Jim Bethke
Director, Task Force on Indigent Defense
Texas Judicial Council
Filed: August 27, 2004

♦ ♦ ♦

## Texas Lottery Commission

Instant Game No. 478 "Find the 9's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 478 is "FIND THE 9'S". The play style is "match up with prize legend".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 478 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 478.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: $1.00, $2.00, $3.00, $5.00, $30.00, $50.00, $300 and 9 SYMBOL.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 478 - 1.2D

| PLAY SYMBOL | CAPTION |
|---|---|
| $1.00 | ONE$ |
| $2.00 | TWO$ |
| $3.00 | THREE$ |
| $5.00 | FIVE$ |
| $30.00 | THIRTY |
| $50.00 | FIFTY |
| $300 | THR HUND |
| 9 SYMBOL | NINE |

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 478 - 1.2E

| CODE | PRIZE |
|---|---|
| ONE | $1.00 |
| TWO | $2.00 |
| THR | $3.00 |
| FIV | $5.00 |
| NIN | $9.00 |
| NNT | $19.00 |

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $5.00, $9.00, or $19.00.

H. Mid-Tier Prize - A prize of $30.00, $50.00, $90.00 or $300.

I. High-Tier Prize- A prize of $999.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (478), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 478-0000001-000.

L. Pack - A pack of "FIND THE 9'S" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Ticket 000 to 004 will be on the top page; tickets 005 to 009 will be on the next page etc.; and ticket 245 to 249 will be on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number through the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "FIND THE 9'S" Instant Game No. 478 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "FIND THE 9'S" Instant Game is determined once the latex on the ticket is scratched off to expose six (6) Play Symbols. If the player reveals three (3) identical prize amounts, the player will win that amount. If the player finds any "9" play symbols in the play area, the player will win the corresponding prize in the prize legend. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly six (6) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly six (6) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the six (6) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the six (6) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical patterns.

B. No ticket will contain two (2) sets of three (3) matching prize amounts.

C. No prize amount will appear more than three (3) times on a ticket.

D. No ticket will contain one (1) or more "9" symbols and three (3) identical prize symbols.

E. The "9" symbol will never appear on non winning tickets.

F. Tickets can win only once.

G. The "9" symbol will appear as per the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "FIND THE 9'S" Instant Game prize of $1.00, $2.00, $3.00, $5.00, $9.00, $19.00, $30.00, $50.00, $90.00 or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not in some cases, required to pay a $30.00, $50.00, $90.00, or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "FIND THE 9'S" Instant Game prize of $999, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "FIND THE 9'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "FIND THE 9'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "FIND THE 9'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not

claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 19,920,000 tickets in the Instant Game No. 478. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 478 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in** |
|---|---|---|
| $1 | 2,231,040 | 8.93 |
| $2 | 956,160 | 20.83 |
| $3 | 398,400 | 50.00 |
| $5 | 239,040 | 83.33 |
| $9 | 159,360 | 125.00 |
| $19 | 79,680 | 250.00 |
| $30 | 19,920 | 1,000.00 |
| $50 | 12,450 | 1,600.00 |
| $90 | 10,458 | 1,904.76 |
| $300 | 498 | 40,000.00 |
| $999 | 149 | 133,691.28 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.85. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 478 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 478, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200405377
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 25, 2004

♦ ♦ ♦

Instant Game No. 495 "Hot 50's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 495 is "HOT 50'S". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 495 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 495.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for

dual-image games. The possible black play symbols are: $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $200, $1,000, $25,000, 1 SYMBOL, 2 SYMBOL, 3 SYMBOL, 4 SYMBOL, 5 SYMBOL, 6 SYMBOL, 7 SYMBOL, 8 SYMBOL, 9 SYMBOL, 10 SYMBOL, 11 SYMBOL, 12 SYMBOL, 13 SYMBOL, 14 SYMBOL, 15 SYMBOL, 16 SYMBOL, 17 SYMBOL, 18 SYMBOL, 19 SYMBOL, 20 SYMBOL, FLAME SYMBOL, and CHILI PEPPER SYMBOL.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 495 - 1.2D

| PLAY SYMBOL | CAPTION |
|---|---|
| $1.00 | ONE$ |
| $2.00 | TWO$ |
| $4.00 | FOUR$ |
| $5.00 | FIVE$ |
| $10.00 | TEN$ |
| $20.00 | TWENTY |
| $50.00 | FIFTY |
| $200 | TWO HUN |
| $1,000 | ONE THOU |
| $25,000 | 25 THOU |
| 1 SYMBOL | ONE |
| 2 SYMBOL | TWO |
| 3 SYMBOL | THR |
| 4 SYMBOL | FOR |
| 5 SYMBOL | FIV |
| 6 SYMBOL | SIX |
| 7 SYMBOL | SVN |
| 8 SYMBOL | EGT |
| 9 SYMBOL | NIN |
| 10 SYMBOL | TEN |
| 11 SYMBOL | ELV |
| 12 SYMBOL | TLV |
| 13 SYMBOL | TRN |
| 14 SYMBOL | FTN |
| 15 SYMBOL | FFN |
| 16 SYMBOL | SXN |
| 17 SYMBOL | SVT |
| 18 SYMBOL | ETN |
| 19 SYMBOL | NTN |
| 20 SYMBOL | TWY |
| FLAME SYMBOL | WIN |
| CHILI PEPPER SYMBOL | TRP |

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 495 - 1.2E

| CODE | PRIZE |
|---|---|
| TWO | $2.00 |
| FIV | $5.00 |
| EGT | $8.00 |
| TEN | $10.00 |
| TWN | $20.00 |

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $5.00, $8.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00, or $200.

I. High-Tier Prize- A prize of $1,000 or $25,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (495), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 495-0000001-000.

L. Pack - A pack of "HOT 50'S" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 000 and 001 are on the top page, tickets 002 and 003 are on the next page, and so forth, and tickets 248 and 249 on the last page. Please note the books will be in an A - B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "HOT 50'S" Instant Game No. 495 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "HOT 50'S" Instant Game is determined once the latex on the ticket is scratched off to expose twenty-two (22) Play Symbols. If a player matches any of the YOUR NUMBERS to either WINNING NUMBER, the player will win the prize for that number. If the player gets a fire symbol, the player will win the prize shown instantly. If the player gets a chili pepper symbol, the player will win triple the prize shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly twenty-two (22) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly twenty-two (22) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the twenty-two (22) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the twenty-two (22) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical "spot for spot" play data.

B. No duplicate non-winning Your Numbers play symbols on a ticket.

C. No duplicate Winning Numbers play symbols on a ticket.

D. No three or more like non-winning prize symbols on a ticket.

E. No more than one pair of duplicate non-winning prize symbols on a ticket.

F. The auto win symbol will never appear more than once on a ticket.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

H. No prize amount in a non-winning spot will correspond with the Your Numbers play symbol (i.e. 5 and $5).

I. The tripler symbols will never appear more than once on a ticket.

J. The triple and the auto win symbol will never appear together on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "HOT 50'S" Instant Game prize of $2.00, $5.00, $8.00, $10.00, $20.00, $50.00, or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HOT 50'S" Instant Game prize of $1,000 or $25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HOT 50'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "HOT 50'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "HOT 50'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with

an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 495. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 495 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in** |
|---|---|---|
| $2 | 1,249,920 | 8.06 |
| $5 | 604,800 | 16.67 |
| $8 | 141,120 | 71.43 |
| $10 | 100,800 | 100.00 |
| $20 | 60,480 | 166.67 |
| $50 | 54,180 | 186.05 |
| $200 | 5,460 | 1,846.15 |
| $1,000 | 130 | 77,538.46 |
| $25,000 | 12 | 840,000.00 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.55. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 495 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 495, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200405378

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 25, 2004

♦ ♦ ♦

## Public Utility Commission of Texas

### Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 25, 2004, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Dynowatt LP for Retail Electric Provider (REP) certification, Docket Number 30125 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than September 17, 2004. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30125.

TRD-200405514
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 31, 2004

♦ ♦ ♦

## Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on August 27, 2004, with the Public Utility Commission of Texas, for an amendment to a certificated service area boundary.

Docket Style and Number: Application of Southwestern Bell Telephone, L.P. d/b/a SBC Texas for Amendment to a Certificate of Convenience and Necessity for Renner Zone (Dallas) and Carrollton Exchanges. Docket Number 30129.

The Application: Southwestern Bell Telephone, L.P. d/b/a SBC Texas filed an application to amend the certificated service area boundary of its Renner Zone (Dallas Metropolitan Exchange) and the Carrollton Exchange of Verizon. There are no customers currently located in the affected area. Verizon has filed a letter of concurrence with the application. SBC Texas stated that the proposed realignment of service area boundary is being filed to accurately illustrate the common serving area boundary to be consistent with the way this boundary is being administered by both companies.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by September 24, 2004, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 30129.

TRD-200405515
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 31, 2004

♦ ♦ ♦

## Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 23, 2004, for a service provider certificate of operating authority (SPCOA), pursuant to Public Utility Regulatory Act (PURA) §§54.151 - 54.156. A summary of the application follows.

Docket Title and Number: Application of Airespring, Incorporated for a Service Provider Certificate of Operating Authority, Docket Number 30119 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, long distance, and wireless services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by all incumbent local exchange companies.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than September 17, 2004. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30119.

TRD-200405382
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 25, 2004

♦ ♦ ♦

## Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 24, 2004, for a service provider certificate of operating authority (SPCOA), pursuant to Public Utility Regulatory Act (PURA) §§54.151 - 54.156. A summary of the application follows.

Docket Title and Number: Application of TeleCommunication Systems, Incorporated for a Service Provider Certificate of Operating Authority, Docket Number 30121 before the Public Utility Commission of Texas.

Applicant intends to provide E9-1-1 Selective Routing Services and associated tandem call switching of E9-1-1 calls.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than September 15, 2004. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30121.

TRD-200405384
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 25, 2004

♦ ♦ ♦

## Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 25, 2004, for a service provider certificate of operating authority (SPCOA), pursuant to

§§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of AGM Telecom Corporation for a Service Provider Certificate of Operating Authority, Docket Number 30124 before the Public Utility Commission of Texas.

Applicant intends to provide inmate collect call and prepaid phone services to correctional facilities.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than September 15, 2004. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30124.

TRD-200405513
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 31, 2004

♦ ♦ ♦

## Sam Houston State University

### Notice of Intent to Seek Consulting Services

In compliance with the provisions of Texas Government Code, Chapter 2254, Sam Houston State University in Huntsville, Texas, solicits Invitation For Offer (IFO) for a consultant for the university's first capital fund-raising campaign. The Chancellor of The Texas State University System and the President of Sam Houston State University have made a fact of finding that the consulting services are necessary and Sam Houston State University does not have the in-house expertise to conduct the campaign. It is the intent of the university to award this contract to Cargill Associates, Ft. Worth, Texas, who has provided previous work of this nature, unless an offer of better value is received. The chosen consulting firm will consult both on campus and from the consultant's offices. The firm will work with the administration, volunteers, and staff to instruct them with regard to major gift fund-raising activities and provide detailed campaign procedures in writing. The firm will provide a fee range for a one-to-two year relationship based on the length of the campaign, which is expected to run approximately three years.

The chosen consulting firm will be responsible for the following: 1) Work with the development staff compiling a case for support 2) Develop a comprehensive campaign plan, volunteer organization, and scheduling 3) Educate the faculty, staff, and supporters regarding the campaign 4) Assist with a program to create awareness about the campaign and involve major donors and prospects 5) Assist with identification of prospects and enlistment and training of campaign volunteers, providing job descriptions and materials for volunteers and staff 6) Assist with writing and preparing all campaign-related printed materials and campaign video and PowerPoint® presentation 7) Orchestrate and solicit certain major gifts 8) Conduct research for qualified foundation and corporation prospects and assist with proposal preparation 9) Develop resources for a system to acknowledge, record, and track campaign pledges and assist with implementing a follow-up program for the collection of pledges 10) Assist with a program for donor and volunteer recognition.

Selection criteria will be based on the best value which will be determined by the university, and cover such areas as previous experience, client references and responsibilities listed in this IFO.

Because the value of the contract is expected to exceed $100,000, a HUB Subcontracting Plan must be submitted with the IFO. The university will take responsibility for printing, mail-outs, advertising and other related responsibilities. For information regarding the HUB Subcontracting Plan contact the Director of Purchasing/HUB Coordinator, John Hitzeman at 936-294-1894.

Persons interested in a complete IFO should contact Dan Fry, Purchaser, Purchasing Department, Sam Houston State University, 936-294-1941, for complete IFO requirements.

All IFO's must be received in the office of Dan Fry, Purchaser, Purchasing Department, P. O. Box 2028, 1903 University Ave. Estill Bldg. Rm. 330, Huntsville, Texas 77340, no later than 3:00 pm, October 4, 2004.

TRD-200405512
James F. Gaertner
President
Sam Houston State University
Filed: August 31, 2004

♦ ♦ ♦

## Texas A&M University, Board of Regents

### Request for Proposal Addendum #5

RFP MAIN 04-0020

The President of Texas A&M University has affirmed the necessity of these consulting services for assisting in the creation of a strategic direction of Voice over IP deployment (VoIP).

Addendum information concerning addenda 1-6 is available on the Electronic State Business Daily under RFP MAIN 04-0020.

**Information may be obtained by contacting:**

**Mary Sue Goldwater, CTPM, C.P.M.**

**Associate Director of Purchasing Services**

**Texas A&M University**

**P.O. Box 30013**

**College Station, Texas 77842-0013**

**Or e-mail at ms-goldwater@tamu.edu**

**Proposals must be received before 5:00 p.m. on September 30, 2004**

TRD-200405438
Thelma Isenhart
Assistant Executive Secretary to the Board
Texas A&M University, Board of Regents
Filed: August 27, 2004

♦ ♦ ♦

## Texas Department of Transportation

### Notice of Public Hearing on Proposed Municipal Restrictions on Use of State Highway

The Texas Department of Transportation (department) will conduct a public hearing to receive comments on a proposed restriction initiated by the department establishing lane use restrictions for certain classes of vehicles on Interstate Highway 45 in Harris County from Greens Road to the Harris/Montgomery county line.

In accordance with Transportation Code, §545.0651, and 43 TAC §§25.601-25.604, the department is proposing to initiate a lane use restriction applicable to trucks, as defined in Transportation Code, §541.201, with three or more axles, and to truck tractors, also as defined in Transportation Code, §541.201, regardless of whether the truck tractor is drawing another vehicle or trailer. The proposed restriction would prohibit those vehicles from using the left or inside lane on Interstate Highway 45 from the Montgomery/Harris county line extending southward and ending at Greens Road in the City of Houston. The proposed restriction is consistent with and extends a lane use restriction on Interstate Highway 45 adopted by the City of Houston.

The proposed restrictions would apply 24 hours a day, 7 days a week, and would allow the operation of those vehicles in a prohibited traffic lane for the purposes of passing another vehicle or entering or exiting the highway.

In accordance with 43 TAC §25.603(f)-(h), the department will evaluate the impact of the proposed restriction's compliance with the requirements of Transportation Code, §545.0651 and 43 TAC §§25.601-25.604, and will hold a public hearing to receive comments on the proposed restriction. The hearing will be held at 4:00 p.m. on Tuesday, September 21, 2004, at the following location:

Texas Department of Transportation

Houston District Headquarters, Main Conference Room

7721 Washington Avenue

Houston, Texas 77007

All interested citizens are invited to attend the hearing and to provide input. Those desiring to make official comments may register starting at 3:30 p.m. Oral and written comments may be presented at the public hearing or written comments may be submitted by regular postal mail during the public comment period. Written comments may be submitted to Mr. Gary K. Trietsch, District Engineer, Houston District, Texas Department of Transportation, P.O. Box 1386, Houston, Texas 77251-1386. The deadline for receipt of written comments is 5:00 p.m. on October 11, 2004.

Persons with disabilities who plan to attend the public hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print, or Braille, are requested to contact James Keener at (713) 802-5185 at least two business days prior to the hearing so that appropriate arrangements can be made. For more information concerning the public hearing, please contact James Keener.

TRD-200405517

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: September 1, 2004

♦ ♦ ♦

## Request for Proposals for Aviation Engineering Services

Request for Proposals for Aviation Engineering Services: The Airport Sponsors through their agent, the Texas Department of Transportation (TxDOT), intend to engage aviation professional engineering firms for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT, Aviation Division will solicit and receive proposals for professional aviation engineering design services described in this notice.

Airport Sponsor: City of Caldwell, Caldwell Municipal Airport. TxDOT CSJ No.:0517CALDW Scope: Provide engineering/design services to install runway exit and hold signs; rehabilitate parallel and stub taxiway; rehabilitate and mark runway 15-33; rehabilitate hangar access taxiway and rehabilitate apron. The HUB goal is set at 8%. TxDOT Project Manager is Charles Graham. Grant Manager is Amy Deason. Please submit four completed, unfolded copies of Form AVN 550.

Airport Sponsor: The City of Cameron, Cameron Municipal Airpark, TxDOT CSJ No. 0517CMRON, Scope: To provide engineering/design services to rehabilitate Runway 16-34 and stub taxiway, mark Runway 16-34, reconstruct apron, replace rotating beacon & tower, improve runway safety area, replace segmented circle. The HUB goal is set at 7%. TxDOT Project Manager is John Wepryk, P.E. Grant Manager is Sheri Quinlan. Please submit four completed, unfolded copies of Form AVN 550.

Airport Sponsor: The City of Clifton, Clifton Municipal Airport, TxDOT CSJ No. 0509CLFTN Scope: Provide engineering/design services for Rehabilitate RW 14-32, Mark Runway 14-32, Rehabilitate & Mark Taxiways, Rehabilitate Aprons, Replace LIRL with MIRL Runway 14-32, Install Signage, Replace Rotating Beacon with Rotating Beacon and Tower at the Clifton Municipal Airport. The DBE goal is set at 5%. TxDOT Project Manager is Harry Lorton, P.E. Grant Manager is Sheri Quinlan. Please submit six completed, unfolded copies of Form AVN 550.

Airport Sponsor: Brooks County, Brooks County Airport. TxDOT CSJ No.:0421FALRS Scope: Provide engineering/design services to: Extend RW 17-35 RW 35 end; Install PAPI-4 RW 17-35; Mark RW 17-35; Overlay and mark section of RW 14-32; Construct partial parallel TW to RW 35 end; Overlay RW 17-35; Enlarge turnaround RW 17 end; Extend MIRL RW 17-35 RW 35 end; Overlay apron, south end; Overlay & mark TW "A;" Install perimeter fence; Overlay & mark TW "E" Prepare site for runway 35 extension and install erosion/sedimentation controls. The DBE goal is set at 8%. TxDOT Project Manager is Harry Lorton, P.E. Grant Manager is Amy Deason. Please submit six completed, unfolded copies of Form AVN 550.

Airport Sponsor: City of Hearne, Hearne Municipal Airport. TxDOT CSJ No.:0517HEARN Scope: Provide engineering/design services to Rehabilitate apron, rehabilitate and mark runway 18-36, rehabilitate and mark parallel and cross taxiways and install signage. The DBE goal is set at 7%. TxDOT Project Manager is Charles Graham. Grant Manager is Amy Deason. Please submit four completed, unfolded copies of Form AVN 550.

Airport Sponsor: Jim Hogg County, Jim Hogg County Airport, TxDOT CSJ No. 0521HEBRN, Scope: To provide engineering/design services to rehabilitate and mark taxiways and Runway 13-31, rehabilitate apron, install PAPI-4 at the Jim Hogg County Airport. The DBE goal is set at 10%. TxDOT Project Manager is John Wepryk, P.E.

Grant Manager is Sheri Quinlan. Please submit five completed, unfolded copies of Form AVN 550.

Airport Sponsor: City Of Lampasas, Lampasas Municipal Airport. TxDOT CSJ No.:0523LMPAS Scope: Provide engineering/design services to rehabilitate runway 16-34; mark runway 16-34; rehabilitate and mark partial parallel taxiway; rehabilitate and mark stub taxiway; rehabilitate and mark turnaround runway 16 end; rehabilitate and reconstruct north hangar access taxiway; rehabilitate south hangar access taxiway; reconstruct and rehabilitate apron. The DBE goal is set at 8%. TxDOT Project Manager is Charles Graham. Grant Manager is Amy Deason. Please submit eight completed, unfolded copies of Form AVN 550.

Airport Sponsor: City of Levelland and Hockley County, Levelland Municipal Airport. TxDOT CSJ No.:0505LVLND Scope: Provide engineering/design services to rehabilitate and mark parallel and stub taxiways; rehabilitate apron; rehabilitate and mark runway 17-35; rehabilitate and mark runway 8-26; install PAPI runway 35 end; rehabilitate hangar access taxiways. The DBE goal is set at 6%. TxDOT Project Manager is Bijan Jamalabad, P.E. Grant Manager is Amy Deason. Please submit six completed, unfolded copies of Form AVN 550.

Airport Sponsor: City of Littlefield, Littlefield Municipal Airport. TxDOT CSJ No.:0505LTFLD Scope: Provide engineering/design services to rehabilitate apron; replace rotating beacon and tower; rehabilitate and mark runway 1-19 and rehabilitate and mark parallel. The DBE goal is set at 7%. TxDOT Project Manager is Bijan Jamalabad, P.E. Grant Manager is Amy Deason. Please submit four completed, unfolded copies of Form AVN 550.

Airport Sponsor: Ochiltree County and the City of Perryton, Perryton/Ochiltree County Airport. TxDOT CSJ No.:0504PERRY Scope: Provide engineering/design services Repair/rehab and mark RW 17-35 and Repair/rehab and Mark parallel taxiway. The DBE goal is set at 8%. TxDOT Project Manager is Charles Graham. Grant Manager is Amy Deason. Please submit six completed, unfolded copies of Form AVN 550.

Airport Sponsor: Reagan County, Reagan County Airport. TxDOT CSJ No.:0507BGLKE Scope: Provide engineering services to design and construct new apron; construct new stub taxiway; and install precision approach path indicator -2 Runway 16-34 and other miscellaneous items. The HUB goal is set at 5%. TxDOT Project Manager is Steve Roth. Grant Manager is Edie Stimach. Please submit five completed, unfolded copies of Form AVN 550.

Airport Sponsor: City of Tahoka, T-Bar Airport. TxDOT CSJ No.:0505TAHOK Scope: Provide engineering/design services to overlay and mark stub taxiway; overlay and mark runway 17-35; overlay apron and replace LIRL with MIRL runway 17-35. The HUB goal is set at 7%. TxDOT Project Manager is Charles Graham. Grant Manager is Amy Deason. Please submit four completed, unfolded copies of Form AVN 550.

Airport Sponsor: Trinity County and City of Groveton, Groveton-Trinity County Airport. TxDOT CSJ No.:0511GRVTN Scope: Provide engineering/design services to rehabilitate the runway, cross taxiway, and apron; mark the runway; install new rotating beacon and tower; and install new segmented circle. The HUB goal is set at 6%. TxDOT Project Manager is Russell Deason. Grant Manager is Edie Stimach. Please submit six completed, unfolded copies of Form AVN 550.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address:

http://www.dot.state.tx.us/avn/avn550.doc

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

(Attention: To ensure utilization of the latest version of Form 550, firms are encouraged to download Form 550 from the TxDOT website as addressed above. Utilization of Form 550 from a previous download may not be the exact same format. Form 550 is an MS Word Template).

Proposals must be postmarked by U. S. Mail by midnight October 1, 2004, (CDST). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDST) on October 4, 2004; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. October 4, 2004 (CDST); hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted.

For more information on these requests for proposals go to the Aviation Consultant Contracts web page or contact the project specific grant manager for any procedural questions and the project manager for technical questions at 1-800-68-PILOT (74568).

TRD-200405502
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: August 31, 2004

## Requests for Proposals for Aviation Professional Services

Request for Proposals for Aviation Professional Services: The Airport Sponsor's through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described in this notice.

Airport Sponsor: The City of Mesquite, Mesquite Metro Airport, TxDOT CSJ No. 0518MSQTE, Scope: Prepare an Airport Master Plan which includes, but is not limited to, information regarding existing and future conditions, proposed facility development to meet existing and future demand, constraints to develop, anticipated capital needs, financial considerations, management structure and options, as well as an updated Airport Layout Plan. The DBE goal is set at 0%. TxDOT Project Manager is Bruce Ehly. Four unfolded copies of Form AVN-551 are requested.

Airport Sponsor: Texas State Technical College-Waco, Texas State Technical College-Waco Airport, TxDOT CSJ No. 0509TSTCW, Scope: Prepare an Airport Development Plan which includes, but is not limited to information regarding existing and future conditions, proposed facility development to meet existing and future demand, constraints to develop, anticipated capital needs, financial considerations, management structure and options, as well as an updated Airport Layout Plan. The Airport Development Plan should be tailored to the individual needs of the airport. The HUB goal is set at 0%. TxDOT Project Manager is Michelle Hannah. Five unfolded copies of Form AVN-551 are requested.

Airport Sponsor: The City of Ennis, Ennis Municipal Airport, TxDOT CSJ No. 0518ENNIS, Scope: The project is a feasibility study to examine the need for a new, replacement airport. Possible future projects may include site selection, environmental assessment and Airport Master Plan should it be determined that a new airport is necessary. The HUB goal is set at 0%. TxDOT Project Manager is Bruce Ehly. Five unfolded copies of Form AVN-551 are requested.

For more information on these requests for proposals, go to the Aviation Consultant Contracts or contact Sheri Quinlan, Grant Manager, for any procedural questions and the assigned Project Manager for technical questions at 1-800-68-PILOT (74568).

http://www.dot.state.tx.us/business/avnconsultinfo.htm

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address:

http://www.dot.state.tx.us/avn/avn551.doc

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

(Attention: To ensure utilization of the latest version of Form 551, firms are encouraged to download Form 551 from the TxDOT website. Utilization of Form 551 from a previous download may not be the exact same format. Form 551 is an MS Word Template).

Form AVN- 551 must be postmarked by U. S. Mail by midnight October 4, 2004 (CDST). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDST) on October 5, 2004; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Please mark the envelope of the forms to the attention of Sheri Quinlan. Hand delivery must be received by 4:00 p.m. October 5, 2004 (CDST); hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted.

The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating planning proposals can be found at:

www.dot.state.tx.us/business/avnconsultinfo.htm

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. In such a case, selection will be made following interviews.

TRD-200405501
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: August 31, 2004

♦ ♦ ♦

## University of Houston System

Request for Proposal

In compliance with Chapter 2254, Texas Government Code, the University of Houston System furnishes this notice of request for proposal. The University of Houston System seeks proposals from qualified firms to provide advice and consultation to the University of Houston and its student affairs and housing offices to assist in undertaking a housing market study and financial feasibility analysis for the campus long range housing plan. This advice and consultation is authorized and supported by the UHS Chancellor as being of substantial need and necessary in performing the needed evaluation. Interested parties are invited to express their interest and describe their capabilities on or before October 11,2004.

The term of the contract is to be for a five (5) month period beginning on or about October 15, 2004 and ending March 15, 2005. Further technical information can be obtained from Dilip Anketell at 713-743-5354. All proposals must be specific and must be responsive to the criteria set forth in this request.

GENERAL INSTRUCTIONS: Submit twelve (12) copies of your proposal in a sealed envelope to: University of Houston, Attention: Vergel L Gay, AIA, Executive Director, Facilities Planning and Construction, University of Houston, 4211 Elgin, Suite 200, Houston, Texas 77204-2013 before 2:00 P.M. October 11, 2004.

SCOPE OF WORK: The objectives of the study include, but are not limited to, the following: (A) To determine the demand for additional housing for undergraduate (lower and upper division) students; graduate doctoral and post-doctoral students; theme housing for groups such as professional schools, arts, international, etc.; married and family students; and faculty and staff; (B) To determine the types of housing each group above would prefer; (C) Which amenities are desired and needed by each client group; (D) How much each client group is willing to pay for the housing; (E) What alternatives to on-campus housing exists and what is the availability, type, cost, quality and age; (F) Evaluate each potential housing site to determine the number and type of housing units each site should accommodate; (G) Develop a financial pro forma for each project; (H) Develop an overall schedule for housing development and delivery based on the projects and pro forma developed above.

Criteria for Evaluation: A. Relevant Qualifications and Experience (30 Points); B. Price (25 Points); c. Responsiveness to RFP (25 Points); D. Team Composition and Capabilities (20 Points).

Schedule: October 11, 2004 Proposal Due; On or about October 15, 2004 Firm is selected and Project begins; and March 15, 2005, Project completed.

TERMINATION: This Request for Proposal (RFP) in no manner obligates the University of Houston System to the eventual purchase of any services described, implied or which may be proposed until confirmed by a written consultant contract. Progress towards this end is solely at the discretion of the University of Houston System and may be terminated without penalty or obligation at any time prior to the signing of a contract. The University of Houston System reserves the right to amend or cancel this RFP at any time, for any reason and to reject any or all proposals.

TRD-200405523
Dona G. Hamilton
VC/VP for Legal Affairs and General Counsel
University of Houston System
Filed: September 1, 2004

♦ ♦ ♦

## How to Use the Texas Register

**Information Available**: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules**- sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules**- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite**: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

**How to Research**: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

## Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite**: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update**: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
***Part I. Texas Department of Human Services***
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues required. You may use your VISA or Mastercard. All purchases made by credit card will be subject to an additional 2.1% service charge. Return this form to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824. For more information, please call (800) 226-7199.

☐ **Change of Address**
*(Please fill out information below)*

☐ **Paper Subscription**
☐ One Year $200 ☐ First Class Mail $300

☐ **Back Issue ($10 per copy)**
_____ Quantity

Volume _____, Issue #_____.
*(Prepayment required for back issues)*

NAME_____

ORGANIZATION _____

ADDRESS _____

CITY, STATE, ZIP _____

PHONE NUMBER _____

FAX NUMBER _____

Customer ID Number/Subscription Number _____
*(Number for change of address only)*

**Payment Enclosed via** ☐ Check ☐ Money Order
Mastercard/VISA Number _____
Expiration Date _____/_____ Signature _____

Please make checks payable to the Secretary of State. Subscription fees are not refundable.
Do not use this form to renew subscriptions.

Visit our home on the internet at http://www.sos.state.tx.us.

_____
_____
Periodical Postage

PAID

Austin, Texas
and additional entry offices

_____
_____